
(1980) 07 AHC CK 0050
In the Allahabad High Court
Case No : F.A.F.O. No. 608 of 1976

Oriental Fire and General Insurance Co. Ltd. and Others	APPELLANT
Vs	
Satya Deo Dubey	RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Citation : (1983) 53 CompCas 583

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : A.B. Saran, for the Appellant;

Final Decision : Partly Allowed

Judgement

Sapru, J.—Bus No. USE 404 was owned by one Ghanshyam Das and was insured with the Oriental Fire and General Assurance Co. Ltd. Its driver was Bhagwan Das. All the three are the appellants before this court. On February 19, 1973, in the afternoon, this bus was running on the route Chirgan to Jhansi. Bhagwan Das was driving the bus. Satyadeo Dubey, aged about 24 years, was travelling as a passenger in the bus. At about 3-30 p.m. this bus collided with a tree at a place between Pahari Burjurg and Gulara. Satya Deo Dubey along with others sustained injuries and was removed to the hospital on February 19, 1973, and remained in the Civil Hospital, Jhansi, till April 10, 1973, on which date he was discharged from the hospital.

2. Satya Deo Dubey filed a claim petition claiming Rs. 20,000 as compensation. The Claims Tribunal has awarded him compensation amounting to Rs. 10,000. Out of this amount, Rs. 5,000 have been directed to be recovered from the insurance company and the balance from Sri Ghanshyam Das alias Machhar Mal, the owner of the bus. The factum of the accident is not disputed. It is also not disputed that the immediate cause of the accident was that the bowl of the tie rod was broken as a result of which the driver could not control the vehicle which collided against a (sic) sustained injuries and was taken to the hospital where he

remained under treatment from February 19, 1973, to April 19, 1973.

3. Sri A. B. Saran, appearing on behalf of the appellants, urged that the accident in which Satya Deo Dubey received injuries was not due to the negligence of either the owner of the vehicle or its driver as it was due to a sudden breaking of the bowl of the tie rod. In this connection, he has relied upon the statement of the driver of the vehicle, Sri Bhagwan Das, who stated that before he took the vehicle out on that date he checked the vehicle and the tie rod was found to be in working order.

4. The circumstances in which the accident occurred, *prima facie*, shows negligence on the part of the owner and the driver of the vehicle.

5. The doctrine of *res ipsa loquitur* would apply. In *Charlesworth on Negligence*, Sixth Edition, paragraph 278, the decision of the House of Lords in the case of *Henderson v. Henry E. Jenkins and Sons* [1970] AC 282 has been referred. In the aforesaid case, it has been observed as follows:

" Where it was sought to rely on a latent defect as the sole cause of an accident the onus was on the defendant to establish that and to show that the accident had occurred despite proper maintenance having been carried out by them. In *Henderson v. Henry E. Jenkins and Sons* a sudden escape of brake fluid from a hole in a pipe in the hydraulic braking system resulting from corrosion of that pipe, which could not have been seen on a visual inspection with the pipe in situ, caused a brake failure when the respondent's heavily laden lorry was descending a steep hill so that it ran out of control and killed the deceased. The House of Lords held that the lorry owners could not rely on the defence of a latent defect not discoverable by the exercise of reasonable care unless they proved that they had taken all reasonable care in the circumstances. In order to do that they had to show that there were no special circumstances in the past use of the vehicle to indicate that it might have been subjected to a corrosive agent resulting in the corrosion of the pipe, which they had failed to prove. Again, if the negligence alleged is the sudden swerve of a vehicle, the *prima facie* case of negligence established by proof of the swerve is not rebutted by the mere suggestion that the swerve may have been necessary to avoid a pedestrian in a highway, but full proof is required."

6. In the case of *Kumari Swarnalata Kapoor and Others Vs. Jogendrapal Ramrakha Punjabi and Others*, it was held that where *prima facie* negligence on the part of the driver is established, the defendant, in order to displace the presumption of negligence must show from the evidence either that the immediate cause of the break-down tyre burst or skid was due to a specific cause which does not connote negligence on his part but points to its absence as more probable or he must show that all reasonable care in and about the management of the vehicle was taken. The burden, in the first instance, is on the defendant to disprove his liability.

7. In the present case, the vehicle was manufactured in the year 1962 and the

accident took place in the year 1973. There is no evidence produced on the part of the defendant-appellants to show as to in what manner the vehicle was being maintained. It has not been specifically shown that the vehicle was periodically checked and its parts including the tie rod were found to be in working order. In these circumstances, negligence on the part of the owner of the vehicle and its driver is established. Sri A. B. Saran next submitted that the quantum of damages is excessive. The claimant-respondent was a teacher in a basic primary school at the time of the accident. He was about 24 years. He has suffered disfigurement of one of his ears. At the time of the accident, he was to appear at the M. A. previous examination and he could not do so because of the accident.

8. The claimant-respondent was treated in a Govt. Hospital and a sum of Rs. 1,000 has been awarded to him as compensation for the amount he is estimated to have spent on his treatment. The amount of Rs. 1,000 granted under this head does not call for interference. Considering the fact that the appellant was in hospital for over a month and half and that he sustained disfigurement of one of his ears, a sum of Rs. 6,500 can equitably be awarded as compensation for mental shock and suffering and in order to compensate the claimant-respondent for the disfigurement of his ear. In the result, the appeal is partly allowed. The amount of compensation awarded to the respondent is reduced from Rs. 10,000 to Rs. 7,500. Out of the compensation awarded, the respondent will get Rs. 5,000 from the Oriental Fire and General Assurance Co., appellant No. 1, and Rs. 2,500 from Ghanshyam Das, the owner of the vehicle. The parties will get their costs according to their success and failure in this appeal.