
(1996) 06 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.A. No. 485 of 1988

Peetamber Prasad Ratle and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1998) ACJ 1255

Hon'ble Judges : Shambhoo Singh, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Vivek Shrivastava and Atul Awasthy, for the Appellant; R.P. Agrawal, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—The claimants aggrieved of dismissal of their application for compensation have filed this appeal u/s 110-D of the Motor Vehicles Act, 1939, against the award dated 3.9.1988 passed in Claim Case No. 10 of 1987 by Second Additional Motor Accidents Claims Tribunal, Sehore.

2. Facts giving rise to this appeal are these. Appellant Nos. 1 and 2 are the parents; appellant Nos. 3 and 4 are the sisters and appellant No. 5 is the brother of the deceased Devendra Kumar Ratle who died in a motor accident on 3.6.1984 while returning from Bhopal in the official vehicle jeep MPZ 6536 owned by respondent State of Madhya Pradesh. The deceased was posted as Assistant Engineer (S.D.O.) in Irrigation Department of the Government of Madhya Pradesh at Nasrullahganj at Kolar Project. After obtaining the due permission from J.P. Jain, AW 1, the then Executive Engineer of the Irrigation Department, for going to Bhopal for approval and taking of estimate of Irrigation Project, the deceased left on 3.6.1984 at about 9.00 a.m. for Bhopal in the official jeep driven by Yusuf Khan, AW 6, the driver of the jeep. It was Sunday. On finishing his official work, while the jeep was returning from Bhopal on way Yusuf Khan, AW 6, driver complained severe pain in stomach and fever and told the deceased

that he was not in a position to drive the jeep and made a request to the deceased to drive the jeep as the deceased knew driving and was in possession of driving licence. The deceased took up the jeep and drove it to reach Johellapur. On way near Delavadi Ghati the brakes of the jeep failed as a result of which the jeep did not remain in control of the deceased and fell in a ditch as a result of which the deceased Devendra Kumar died and other occupants R.K. Shrivastava, Assistant Engineer, Kolar Project, AW 2, and driver Yusuf Khan, AW 6, received severe injuries.

3. Legal representatives of the deceased filed an application u/s 110-A of the Motor Vehicles Act, 1939 (for short "the Act"), on 26.11.1984 and claimed compensation of Rs. 11,78,000/- on the averments that the deceased was born on 2.10.1955 who throughout his education career was a brilliant student; after passing and obtaining degree in Bachelor of Engineering (Civil), he was appointed as Assistant Engineer in the Irrigation Department of Government of Madhya Pradesh in the pay scale of Rs. 425-25-500-30-680-40-800-50-900; at the time of his death he was drawing Rs. 1,446/- per month. To discharge his official duties the Government of Madhya Pradesh provided a jeep of 1972 Model which had run more than 2,10,500 km. The applicants averred that the accident occurred due to mechanical defect, i.e., of brake failure as the vehicle was not maintained in a roadworthy condition. Therefore, the respondent State as owner was negligent in providing such a jeep and liable to pay compensation for the death of the deceased which occurred due to the use of motor vehicle, the jeep.

4. Respondent in the written statement denied the averments and submitted that at the time of the death, deceased Devendra Kumar Ratle was getting Rs. 1,385/- as total salary. When the vehicle was allotted to Devendra Kumar Ratle it was in a good condition and was roadworthy. The averment that in view of the memo No. 17/10/78 (11) I/II dated 25.11.1978 issued by the Home Department of the State Government after the run of 1,60,000 kilometres the vehicle became unfit for use was denied. After the repairs of the jeep in March 1983, the vehicle could have run up to 20,000 kilometres more. The deceased Devendra Kumar Ratle did not go for his official work but went for his private work at his own accord. Even if it is found to be correct it was submitted that the driver Yusuf Khan was provided to drive the jeep, therefore, the deceased could not have driven the jeep. The story of driver Yusuf Khan falling ill is false and concocted. It was the deceased who was driving the vehicle rashly and negligently, and in a high speed, hence it did not remain in control, as a result of which the accident occurred. The accident did not occur for any brake failure. The deceased himself contributed to the accident and as such the claimants are not entitled to any compensation.

5. The claimant-appellants in support of their claim examined J.P. Jain, AW 1, Executive Engineer, the superior officer of the deceased who affirmed that he granted permission to the deceased to go to Bhopal and proved the memo Exh. P. 1 dated 15.3.1985 written by him addressed to his superior officer, the

Superintending Engineer, in which he clearly stated that he granted permission to deceased for going to Bhopal. He also went to Bhopal on 2.6.1984 but till the time he was there Devendra Kumar Ratle did not meet him. R.K. Shrivastava, AW 2, another Assistant Engineer stated that he met the deceased on 3.6.1984 in between 1.30 and 2.00 p.m. in Bhopal who told him that he has come for his official work. He also told the deceased that he would also go in the jeep up to Rehli when he boarded the jeep in between 6.30 and 7.00 p.m. which was being driven by the deceased. Yusuf Khan was sitting on the back seat. On the steep slope of Delvadi Ghati the deceased applied brakes to control the jeep but the brakes failed, therefore, the deceased lost control as a result of which jeep dashed with the parapet wall and fell into the ditch 15-20 feet deep as a result of that the deceased, he and Yusuf Khan received injuries. The deceased was taken to the hospital by another passing by jeep but he succumbed to injuries. Yusuf Khan, AW 6, also stated in the same way. He affirmed that he complained several times that the vehicle is not in a roadworthy condition. On that deceased used to say that the jeep has been provided by the Government, about its condition he has complained to his superior officer who advised the deceased to use the vehicle cautiously till it is not replaced. Sandhya Ratle, AW 3 and Shobha Ratle, AW 4, are the sisters and Shailendra Kumar, AW 5, the brother and Prabhavati, AW 7, the mother and Peetamber Prasad, AW 8, the father of the deceased stated that the deceased used to give Rs. 700/- to Rs. 800/- per month to family kitty out of his earnings for meeting out family expenses. The longevity of the family between 85 and 95 years was proved by AW 7 and AW 8. AW 8 also stated that the deceased was the eldest son whose marriage was fixed. Dr. D.K. Satpathi, AW 9, proved the autopsy. In rebuttal respondent examined A.K. Arya, NAW 1, Sub-Divisional Officer (Light Machinery) who proved general report proforma Exh. D. 1 of the jeep. The vehicle was of 1972 model which had run 2,10,500 kilometres. Its engine was overhauled in the year 1981. After its last repairs in March 1983 the jeep could have run about 20,000 kilometres. Its log book is maintained. In para 3 of the statement the witness stated that failure of brakes is mechanical fault which can also occur in a new car. He further stated that he inspected the vehicle at the spot of the accident and found both the brake pipe lines broken which in his opinion were broken because of dash with the wall.

6. The Tribunal after appreciation of the evidence adduced by the parties dismissed the application for compensation, holding that the claimants have failed to establish that on 3.6.1984 the deceased went on official work to Bhopal after seeking prior permission. Though the official jeep was provided to the deceased, but the deceased was not authorised to drive the same as the driver was provided to drive the official jeep. Even for the arguments sake, the driver fell ill on way, the deceased ought to have left the vehicle and should have taken another vehicle. The vehicle was in a good condition, it could have run about 20,000 kilometres from the date of its last repair in March 1983 and generally the jeep runs in official duties 1000 kilometres per month. The claimants have

failed to establish that the accident occurred because of mechanical defect, i.e., failure of brakes. The accident occurred due to own fault of the deceased.

7. Having heard Mr. Atul Awasthy, the learned Counsel for the appellants and Mr. R.P. Agrawal, Additional Advocate General for the State and on reappraisal of evidence, we are of the opinion that this appeal deserves to be allowed.

8. A bare reading of Section 110 and 110-A of the Act shows that the legal representatives of a deceased who dies by use of motor vehicle can maintain their application for compensation u/s 110-A of the Act to invoke the jurisdiction of the Tribunal to award the compensation on establishment that the death so caused arose out of the use of the motor vehicle. The Tribunal's function is to adjudicate upon claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of vehicles vide Section 110 of the Act. The finale of the adjudication is laid down in Section 110-B. It is only after the enquiry, giving the parties an opportunity to be heard, the Tribunal determines the award of compensation which appears to be "just". However, to get an award of compensation an injured or the legal representatives of the deceased have to establish that the accident was caused due to negligence of the driver involved in the motor accident. The liability of the owner of the vehicle to compensate the victim in a motor accident due to negligent driving of his servant is based on law of Torts. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. [See *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 1977 ACJ 118 (SC)].

9. The expression "arising out of the use of motor vehicles" in Section 110(1) of the Act cannot narrowly be construed and must take within its ambit all accidents which are related to the use of a motor vehicle, i.e., any mechanically propelled vehicle adopted for use upon road as defined in Section 2(18) of the Act. The word "use" in the expression is used in a wider sense to cover all engagements of the motor vehicle, including driving, parking, keeping stationary, repairing, leaving unattended on the road or for any other purpose. The Tribunal is given the power to adjudicate claims for compensation arising out of the use of motor vehicles. The legislature, through Section 110(1) of the Act, has conferred that power on the Tribunal which is restricted only to claims arising out of the use of motor vehicles. No other restrictions are imposed by the legislature particularly for the purpose of the class of victims. See the Division Bench decision of this Court in the case of *V.G. Sumant v. Shailendra Kumar* 1980 ACJ 248 (MP) and a Division Bench decision of Kerala High Court in the case of *Motor and General Finance (India) Ltd. Vs. Mary Mony and Others*, , which have been followed in a recent Division Bench decision in *Baby and Others Vs. Sona Khan and Another*, at Gwalior Bench of this Court.

10. In a case where the owner takes up a defence that there was no negligence on the part of the driver, accident occurred due to mechanical defect and was inevitable, in order to succeed the owner has to plead and prove that he has taken all necessary precautions and kept the vehicle in roadworthy condition and

that the defect occurred in spite of the reasonable care and caution taken by the owner and that the accident was due to mechanical defect which was latent, not discoverable by the use of reasonable care. [See Minu B. Mehta's case 1977 ACJ 118 (SC)].

11. In the case in hand, the claim is resisted on the ground that the deceased was not authorised to drive the jeep and he went to Bhopal of his own accord and not for his official work. In our opinion, the finding recorded by the Tribunal accepting the plea is perverse and is contrary to evidence on record. J.P. Jain, AW 1, the Executive Engineer, categorically stated that the deceased went to Bhopal for his official work after seeking permission from him. To that effect he wrote a memo No. 877 dated 15.3.1985 to the Superintending Engineer. To this effect there is corroborative evidence of R.K. Shrivastava, AW 2 and Yusuf Khan, AW 6. Besides, from the documents filed by the respondent State the entry from the Acquittance Roll, 13 of 6/84 at page 24 it is clear that the deceased had withdrawn Rs. 800/- as tour advance which was passed as S.R. bill No. 13 of 6/84. The log book of the vehicle was maintained which, admittedly was in possession of the respondent, was not produced. It is well settled that if all documents admitted to have been in existence are not placed before Court by party concerned, adverse inference has to be drawn against the party. [See Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, . Besides, the respondent State has not produced any oral or documentary evidence to prove the fact that the deceased did not go to Bhopal for his official work. Therefore, from the evidence which has come on record we hold that the deceased went to Bhopal in discharge of his official duties after taking prior permission from the Executive Engineer, AW 1.

12. It takes us to the defence that the deceased was not authorised to drive the official jeep allotted to him as to drive the said vehicle, the driver was provided. It is not in dispute that the deceased was provided a jeep with the driver Yusuf Khan, AW 6, to drive the jeep. The jeep was used by the deceased for his official work in connection with the affairs of the State. On the fateful day when the official jeep was coming back from Bhopal, the driver, AW 6, complained severe stomach pain and fever, hence, requested the deceased to drive the jeep. There is no rebuttal to this evidence. Besides, no evidence has been led that the deceased was not authorised to drive the jeep. Even for arguments sake, if it is correct, it is AW 6 who authorised the deceased to drive the jeep. It may be that it was not proper on the part of the deceased to drive the jeep but nonetheless it was directly connected with "in the course of employment". The fact remains that the jeep was taken to Bhopal by the driver who was authorised to drive the jeep for the purpose connected with the affairs of the State. It is only in the course of the employment of the driver the jeep was being driven by allowing the deceased who was the superior officer, to drive the jeep allotted to him by the State Government. It is established that the accident occurred in the course of the employment of the driver who, by his own act in not following the instructions of the State Government not to allow to drive the jeep by any one

else, allowed the deceased to drive the jeep. Therefore, in the circumstances, the State Government cannot escape its vicarious liability to the heirs of the deceased.

13. Recently, the question has been considered by the Supreme Court in the case of State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others, , wherein the jeep was entrusted by the State Government to the driver to bring employees to the office. On the date of the accident, the driver of the jeep allowed another employee to drive the jeep. The Supreme Court considering the question in para 9 observed thus:

9. The question of payment of compensation for motor accidents has assumed great importance during the last few decades. The road accidents have touched a new height in India as well as in other parts of the world. Traditionally, before Court directed payment of tort compensation, the claimant had to establish the fault of the person causing injury or damage. But of late, it shall appear from different judicial pronouncements that the fault is being read as because of someone's negligence or carelessness. Same is the approach and attitude of the Courts while judging the vicarious liability of the employer for negligence of the employee. Negligence is the omission to do something which a reasonable man is expected to do or a prudent man is expected not to do. Whether in the facts and circumstances of a particular case, the person causing injury to the other was negligent or not has to be examined on the materials produced before the Court. It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not in a prohibited way. The employer shall be liable for such act, because such employee was acting within the scope of his employment and in so acting done something negligent or wrongful. A master is liable even for acts which he has not authorised provided they are so connected with acts which have been so authorised. On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside. In Salmond's Law of Torts, 20th Edn., at page 458, it has been said:

...On the other hand, it has been held that a servant who is authorised to drive a motor vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle".

14. Then, after considering its earlier decisions in Pushpabai Purshottam Udeshi

v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC) and Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC), the Supreme Court observed that once it is found and established that the vehicle was being driven for the business of the employer, then the employer will be held vicariously liable even for the lapse, omission and negligence of his driver to whom the vehicle had been entrusted for being driven for the business of the employer. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. Therefore, the Supreme Court on established facts, held that the driver of the vehicle was fully authorised to drive the jeep for a purpose connected with the affairs of the State and the dispute is only in respect of the manner and the mode in which the said driver performed his duties by allowing another employee of the State Government, who was also going on an official duty, to drive the jeep, when the accident took place. Once it is established that the negligent act of the driver and respondent was "in the course of employment", the appellant State shall be liable for the same.

15. True, ordinarily, when a Government employee is allotted an official car for the official use with the driver it is not expected of such an employee or officer to drive the vehicle himself. But, in the circumstances on established facts, that the jeep was being driven by the authorised driver in course of his employment who allowed the jeep to be driven by the deceased, the superior officer of the driver, to whom the jeep was allotted for the purpose connected with the affairs of the State, even if the manner and mode in which the driver Yusuf Khan performed his duty by allowing the deceased to drive the vehicle when the accident took place was not proper, the respondent State cannot escape its liability.

16. Next question is whether the accident occurred due to the negligence of the deceased himself and, therefore, the legal representatives cannot claim compensation. True, if accident occurs due to negligent act of the deceased who was himself the driver no claim by his legal representatives would be entertainable under the Act. However, in the present case, the case of the legal representatives is that the jeep so provided was not in a roadworthy condition. On the steep slope its brakes failed, therefore, the jeep did not remain in control of the deceased and after striking against the parapet wall it went into ditch. The allegation that the jeep was not in a roadworthy condition has been denied by the respondent State. To prove that the jeep was in a roadworthy condition, the burden was on the respondent State. As it is well settled that the owner is under an obligation for bringing the vehicle on road only if it is roadworthy and that the accident was due to any latent mechanical defect not discoverable by the use of reasonable care and despite such care the defect remains hidden, the owner of the vehicle shall not be liable. See the decision of the Supreme Court in Minu B. Mehta's case 1977 ACJ 118 (SC), wherein the Supreme Court made a reference to the decision of House of Lords in Henderson v. Henry E. Jenkins & Sons 1970 ACJ 198 (HL, England), in para 14 and observed thus :

14. In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The owner is not liable if the accident is due to a latent defect which is not discoverable by reasonable care. The law on this subject has been laid down in *Henderson v. Henry E. Jenkins & Sons* 1970 ACJ 198 (HL, England). In that case the lorry driver applied the brakes of the lorry on a steep hill but they failed to operate. As a result, the lorry struck and killed a man who was emerging from a parked vehicle. The defence was that brake failure was due to a latent defect not discoverable by reasonable care on driver's part. It was found that the lorry was five years old and had done at least 1,50,000 miles. The brakes were hydraulically operated. It was also found after the accident that the brake failure was due to a steel pipe bursting from 7 mm to 1 mm. The corrosion had occurred where it could not be seen except by removing the pipe completely from the vehicle and this had never been done. Expert evidence showed that it was not a normal precaution to do this if, as was the case, the visible parts of the pipe were not corroded. The corrosion was unusual and unexplained. An expert witness said it must have been due to chemical action of some kind, such as, exposure to salt from the roads in winter or on journeys near the sea. The House of Lords held that the burden of proof which lay on the defendants to show that they had taken all reasonable care had been discharged. The defect remained undiscovered despite due care. As the evidence had shown that something unusual had happened to cause this corrosion it was necessary for the defendants to show that they neither knew nor ought to have known of any unusual occurrence to cause the breakdown. [See Bingham's Motor Claims Cases, 7th Edn., p. 219].

17. In the case in hand, from the facts which have come on record, it is amply clear that the vehicle was of 1972 Model which had run more than 2,00,000 kilometres. Its engine was overhauled in the year 1981. Lastly, it came for repairs in March 1983 as is evident from Exh. D. 1 report, which does not say that its brakes were also checked. May be because the brakes might be in order, however, after March 1983 it had run for about fourteen months. The driver, AW 6, used to complain about the condition of the vehicle as it was not roadworthy. Though A.K. Arya, NAW 1, has stated that when he inspected the vehicle all the pipes of the brakes were found broken but that may be because of striking the jeep with the wall. That statement is contrary to the report which was not produced and suppressed by the respondent. The mechanical examination of the jeep was done after the accident. The Sub-Divisional Engineer who after the accident inspected the vehicle, gave his report dated 11.6.84 at page 10 of the record and opined that accident occurred due to brake failure and because of that at steep slope jeep did not remain in control.

18. As the respondent State has not discharged its burden that the accident was due to latent mechanical defect not discoverable by the use of reasonable care and vehicle so provided was in a roadworthy condition. It is amply established that the accident occurred due to failure of brakes, the legal representatives of

the deceased would be entitled to claim compensation as there was actionable wrong on the part of the State, the owner of the vehicle. In the case of Baby and Others Vs. Sona Khan and Another, , the tempo suffered accident on account of being not kept in proper condition as a result of which the driver died and for his death the legal representatives claimed compensation. It was contended that the accident occurred due to negligence of the owner inasmuch as on failure of rod (gilli pipe) fitted in the steering wheel, therefore, on account of the lapse on part of the owner, heirs of the driver were entitled to compensation. The Court referring to the decision of the Supreme Court in Minu B. Mehta's case 1977 ACJ 118 (SC), Kerala High Court decisions in Motor and General Finance (India) Ltd. Vs. Mary Mony and Others, and in Oriental Fire and Genl. Ins. Co. Ltd. and Another Vs. P.P. Misri and Others, , observed that in a situation where accident occurs for no fault of the driver but because of the mechanical breakdown by use of the motor vehicle and the driver suffers injuries or dies, the owner shall be liable because he has failed to discharge his duty cast on him by law and the legal representatives of the deceased driver who dies during the course of his employment not on account of his own negligence but because of the negligence of the owner in not providing the vehicle in a roadworthy condition, would be entitled to claim compensation for the death of the deceased driver. Therefore, we hold that the legal representatives of the deceased in the circumstances of the case, are entitled to compensation.

19. Coming to the quantum of compensation, the Tribunal has not determined the compensation. Considering the age of the deceased at the time of the accident, i.e., about 29 years, who from his earning was contributing to the family Rs. 700/- to Rs. 800/- per month, even we take into consideration Rs. 700/- dependency would come to Rs. 8,400/- per annum. Looking to the age of the parents who at the time of death were nearing sixty, it would be appropriate to adopt multiplier of 10 looking to the span of life in the family. Thus, the amount of compensation would come to Rs. 84,000/- along with 12 per cent per annum interest. However, we are not inclined to grant interest for the whole period of pendency of the claim and the appeal. The claim was filed on 26.11.1984 and award was passed on 5.9.1988, against which the appeal was preferred in the year 1988 itself which came up for final disposal in the year 1996. For this delay in disposal of the claim before the Tribunal and the appeal before this Court the respondent cannot be blamed. Hence, it would be unjust to burden the respondent for none of its fault to pay interest for such a long period spent in litigation, as it is well settled that no one should be made to suffer for the act of the Court, therefore, relying on The Oriental Fire and General Insurance Co. Ltd. Vs. Ram Singh and Others, , we direct that the appellants shall be entitled to interest at the rate of 12 per cent per annum on the amount so determined as compensation for the period of six years only. The amount of Rs. 84,000/- with its interest of six years shall be deposited by the respondent State within three months from today, failing which the interest so awarded shall be payable at the rate of 15 per cent per annum.

20. In the result, the appeal is allowed with costs. The award of the Tribunal is set aside. The appellants are awarded Rs. 84,000/- as compensation with interest as stated hereinabove. Counsel's fee Rs. 1,000/-.