

(1980) 05 OHC CK 0013
In the Orissa High Court
Case No : Misc. Appeal No. 135 of 1977

Prafulla Chandra Mohanty

APPELLANT

Vs

Vasi Dei and Others

RESPONDENT

Date of Decision : 12-05-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1981) ACJ 11

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : S.C. Mohapatra, for the Appellant; R.C. Patnaik, P.K. Misra and S.S. Basu, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 is by the owner of a stage carriage vehicle and is directed against the award of compensation of Rs. 15,000/- to the legal representatives of a passenger of that vehicle who died on account of an accident.

2. The bus, ORP 2630 was proceeding towards Puri in the afternoon of 14-10-1975 with passengers. It had crossed the Daya bridge at Chandanpur and after reporting at the outpost located near the Puri side of the bridge was being driven towards Puri. After a few yards from the place the road has a bend and the Puri-Patamundai bus suddenly came from the reverse direction at great speed. Seeing the fast approaching bus, the driver of Appellant's vehicle swerved the vehicle to the left side, with a view of saving the vehicle and its passengers from disaster. It had rained earlier and the road side earth was slippery. On account of application of the brakes, the vehicle skidded to the extreme left, went out of the road and toppled. As a result thereof, Ghanshyam Bala, a passenger died and several others received injuries. Appellant maintained that the vehicle was not being driven either rashly or negligently at that time. The bus had stopped at the outpost to make the T. G. R. entry and passed

through the busy market area of Chandanpur and, therefore, at the crucial time had not picked up high speed. It is contended that there was no negligence on the part of the driver and if at all, it was a case of error of judgment which was very different from negligence or want of care. It is also contended that the Express bus from the reverse direction suddenly appeared and in his anxiety to save the passengers and the vehicle from total disaster, the driver tried his best to take the vehicle to the extreme left. Unfortunately, the vehicle skidded out of the road and met with the accident. In this view of the matter it is claimed that there was no negligence in driving and there could be no liability to compensate.

3. The claimants had asked for compensation of Rs. 85,000/- by alleging that the deceased was a sub-contractor for earth work, canal excavation and also earned profit out of supplies of vegetables, rice, bamboo and firewood to the workmen. It was stated that the deceased was around forty at the time of death and in normal circumstances would have remained active till the age of 70 years. His annual contribution to the family was to the tune of Rs. 5,000/- and with all deductions, the acceptable claim would work out at Rs. 85,000/-.

4. Four witnesses were examined for the claimants-including the widow (P.W. 2) and the younger brother (P.W. 4). The Appellant examined a passenger (D.W. 1) and the driver (D.W. 2) and on the basis of the evidence, the Tribunal came to hold that the accident took place on account of negligence of the driver and the claimants were entitled to compensation. He ultimately awarded a sum of Rs. 15,000/- as compensation and directed the insurer to bear the burden to the tune of Rs. 5,000/- in view of the statutory limit and directed the owner to pay the balance of Rs. 10,000/-. The owner assails this direction. The claimants have asked for enhancement of the compensation by filing a cross-appeal.

5. Mr. Mohapatra for the Appellant contends that the vehicle was driven at moderate speed. When the on-coming bus was suddenly noticed, attempt was made to take the vehicle in question to the extreme left of the road for safety. The skidding was not on account of rash driving or high speed but because of sudden application of brakes on slippery ground. Since sudden action had to be taken with a view to avoiding total destruction, the situation should be viewed from that angle and the Tribunal has failed to consider the background. Reliance is placed on the following observation of the Supreme Court in the case of Syad Akbar Vs. State of Karnataka, where in paragraph 34, the Court observed:

It was thus evident that the accident happened due to an error of judgment, and not negligence or want of driving skill on the part of the accused. An error of judgment of the kind, such as the one in the instant case which comes to light only on post-accident reflection but could not be foreseen by the accused in that fragmented moment before the accident, is not a sure index of negligence, particularly, when in taking and executing that decision the accused was acting with the knowledge and in the belief that this was the best course to be adopted in the circumstances for everyone's safety.

I do not think what has been said in the extracted paragraph can legitimately be applied to a civil dispute. The very judgment in earlier paragraphs indicates the distinction and the standard of scrutiny and test do vary in a claim for compensation in tort and a prosecution for rash and negligent driving.

6. It is the admitted case of the parties that when brake was applied, the vehicle skidded out of the road. The memorandum of local inspection prepared by the Tribunal indicates the bend was sudden and any on-coming vehicle would not be seen at the spot of accident. When the ill-fated bus was being driven on such a road where the vision was limited on account of the bend, the driver in charge of so many precious human lives in his vehicle should have been extra cautious. "Expect the unexpected" should have been his motto-and he should have been apprehensive of the approach of a vehicle from the opposite direction. The care expected of a quick running vehicle is commensurate with the situation and condition of the road and where the road was bad, narrow, crowded or the like, the care expected from the driver became greater. Added to these, it is in evidence that there had been rain earlier and the driver should have realised that if brakes were suddenly applied, skidding may not be avoidable. If the vehicle was going at a slow speed as claimed, skidding could have been avoided and I concur with the Tribunal that the accident could have been avoided. The liability to compensate, therefore, cannot be disputed.

7. Next comes the question of the quantum. Claim laid down was for a sum of Rs. 85,000/- and the Tribunal has awarded a sum of Rs. 15,000/-. P. W. 2 the widow, has stated that the deceased was 15 years older to her and her age at the time of the death was 38. The age of the deceased can, therefore, be taken at 53 years. It would be reasonable to hold that the deceased would have continued in the profession till he was 60 years" old. Therefore, a seven-year period can be adopted for the purpose of compensation.

8. Law is fairly settled that the loss to the dependants who claims to be compensated is the contribution " from the deceased as the basis for determining the compensation. The income of the deceased according to P. W. 2 was about Rs. 20/-per day. P. W. 1, a relation has put it between Rs. 15/- and 20/- per day. The documents produced by P.W. 4 do not give a clear picture of the earnings of the deceased. On a modest basis we may assess the monthly income at Rs. 450/-. The deceased had a fairly large family and it would be reasonable to proceed on the basis that he was contributing about Rs. 250/- per month to the dependants. Thus the yearly contribution works out at Rs. 3,000/- and for seven years it would be Rs. 21,000/-. For uncertainty of fire and other unforeseen circumstances a slashing cut of one-sixth would be justified That reduces the amount to Rs. 18,000/-. The fact that the entire earning was coming in a capitalized form at a time and was available to earn interest cannot be lost sight of.

9. In the circumstances, determination of the compensation at Rs. 15,000/- does not appear to be neither high nor low. The Tribunal committed certain mistakes,

reached a higher figure and had reduced the quantum. Though I have not adopted the method of calculation, I do not think I should vary the quantum of compensation.

The appeal and the cross-appeal are accordingly dismissed. There would be no order for costs.