
(1978) 07 AHC CK 0007

In the Allahabad High Court

Case No : F.A.F.O. No's. 163 to 168, 304, 310, 313, 317 and 328 to 333 of 1975

Ram Adhin Singh and Others

APPELLANT

Vs

Murari Lal Agrawal and Others

RESPONDENT

Date of Decision : 21-07-1978

Acts Referred:

Fatal Accidents Act, 1855 — Section 1, 1A, 2

Motor Vehicles Act, 1988 — Section 110CC, 2(19), 94

Citation : (1979) ACJ 198

Hon'ble Judges : R.B. Misra, J;J.M.L. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The aforesaid appeals are sequel to an unfortunate accident, which took place on 24th February, 1970, at about 5.00 a.m. on Varanasi Mirzapur Road near village Dum Duma-Ka Sewan within police station Chunar of district Mirzapur, in which three persons lost their lives and three others received injuries.

2. It appears that on the fateful day, the marriage of the son of one Mr. Krishna Dass of Gorakhpur was to take place at Chunar. The marriage party left Gorakhpur by Express Train and reached Varanasi Cantt. at 3.00 a.m. On 24th February, 1970, a bus No. U.P.L. 805 was engaged for carrying the marriage party to Chunar. Besides Mr. Krishna Dass, the marriage party included Moti Chand Agrawal, Dhruwa Kumar Agrawal, Sheo Mangal Singh, Jamuna Prasad, Murari Lal Agrawal, Ram Chandra Prasad and other persons. The bus, after picking up the marriage party at Varanasi Cantt., was proceeding towards Chunar and a truck was coming from the opposite direction. There was a collision of bus No. U.P.L. 805 and truck No. U.P.L. 5384. As a result of the collision, the bus fell down in a neighbouring ditch and six persons, who had boarded the bus, received injuries. Out of those six persons, two persons, namely, Moti Chand Agrawal and Sheo Mangal Singh, succumbed to their injuries on the spot

whereas Dhruwa Kumar Agrawal succumbed to his injuries after three days in Sri Sunder Lal Hospital, Varanasi. The remaining three persons, namely, Jamuna Prasad, Murari Lal Agrawal and Ram Chandra Prasad, however, survived. One other person, who was sitting on the truck, fell down on the road and was also crushed to death by the bus. There is, however no claim petition on behalf of the legal representatives of the said person and, therefore, we are not concerned with him in the present appeals.

3. The owner of the truck is Mr. C.L. Chetwani whereas the bus owner is Sri Ram Adhin Singh. The truck was insured with-- The Northern India General Insurance Co. Ltd. while the bus was insured with the Ruby General Insurance Co. Ltd. for Rs. 20,000/- each.

4. Six set of Claim petitions were filed by the heirs and legal representatives of the three deceased and by the three injured persons and they claimed various amounts of compensation under various heads, namely, for mental shock and physical pain and suffering, for loss of normal expectation of life for out of pocket expenses incurred on the performance of unexpected funeral ceremony and religious rites etc.

5. Claim Petition No. 32 of 1970 was made by Minu Agrawal, widow of Dhruwa Kumar Agrawal. She claimed compensation to the tune of Rs. 2,27,600/- for loss of pleasures of life, for loss of amenities of life, for loss of short expectation of life and for out of pocket expenses in the medical treatment and even charges.

6. Claim Petition No. 37 of 1970 was filed by Mrs. Radhika Devi, widow of Sheo Mangal Singh (deceased) claiming a sum of Rs. 1,37,500/- as compensation.

7. Claim Petition No. 38 of 1970 was filed by Mrs. Chunmun Devi, heir and legal representative of Moti Chand Agrawal (deceased) claiming a sum of Rs. 2,88,400/- as compensation under various heads.

8. Claim Petition No. 33 of 1970 was filed by Murari Lal Agrawal, who claimed a sum of Rs. 1,14,400/- as compensation.

9. Claim Petition No. 34 was made by Jamuna Prasad claiming the following:

Rs. 30,000/- for mental shock and physical pain and suffering;

Rs. 10,000/- for loss of normal amenities of life;

Rs. 5,000/- for loss of shortened expectancy of life;

Rs. 21,600/- for loss of trade and business; and

Rs. 3,000/- for out of pocket expenses for treatment and necessary expenses;

10. Claim Petition No. 35 of 1970 was filed by Ram Chandra claiming the following:

Rs. 3,000/- for mental shock and physical pain and suffering;

Rs. 10,000/- for loss of normal pleasures of life and loss of amenities of life;

Rs. 5,000/- for loss of shortened expectancy of life;

Rs. 10,800/- for loss of income for six years, at the rate of Rs. 150/- per month;

and

Rs. 1,000/- for loss of money on medical treatment and allied expenses.

11. Besides Mr. C.L. Chetwani, the truck owner, and Ram Adhin Singh, the bus owner, their insurers, namely, The Ruby General Insurance Company Ltd. and the Northern India General Insurance Co. Ltd., were also impleaded as parties. On the objection of Ram Adhin Singh, M/s. Hindustan Motor Corporation Limited was also impleaded as a party.

12. Mr. C.L. Chetwani in all the six claim petitions, resisted the claims on the ground that the claim petitions were not properly presented to the Tribunal and were defective because the drivers were not made parties. It was further alleged that the accident did not take place due to the negligence and rashness on the part of the drivers and that the claims were excessive and thus he was not liable to pay any compensation.

13. Ram Adhin Singh, the bus owner, also took similar pleas and further added that the bus, on the date of the accident, was under hire purchase agreement with M/s. Hindustan Motor Corporation Limited and it was registered under the Motor Vehicles Rules in Form "C" wherein there is an endorsement to the effect that the bus was under hire purchase agreement with M/s. Hindustan Motor Corporation Limited, Calcutta. He further pleaded that the Claims Tribunal had no jurisdiction to award compensation against him and the accident took place due to the negligence and rashness of the driver of the truck and there was no rashness or negligence on the part of the bus driver. The bus was fit for driving and was covered with valid fitness certificate. The claim petition was bad for non-joinder of necessary parties and that the claimants of Claim Petition No. 32 of 1970 are not the wife and children of the deceased, Dhurwa Kumar Agrawal did not die due to the injuries sustained by him in the accident and that the bus was insured with a stage carriage, but the same was being plied as a contract carriage, so they were not liable.

14. The pleadings of the parties gave rise to a number of issues in the various Claim Petitions.

15. The Claims Tribunal, on considerations of the materials on the record, came to the conclusion as under:

16. Claim Petition Nos. 32, 37 and 38 of 1970 have been signed by the widows of the deceased, other heirs have not signed the petitions, but it was not necessary that all should join as claimants and the compensation can be awarded on the basis of their being members of the family in the Claim Petitions signed by the widows alone. Moti Chand Agrawal and Sheo Mangal Singh died on the spot as a

result of the injuries received in the accident and Dhurwa Kumar Agrawal died later on in the hospital. Jamuna Prasad, Ram Chandra and Murari Lai also received injuries in that accident. The accident was due to the negligence of the drivers of the bus and the truck. In spite of the hire purchase agreement, Ram Adhin Singh would be deemed to be the owner in view of Section 2(19) of the Motor Vehicles Act. On these findings, the Claims Tribunal assessed the compensation as under:

No. of Claim petition

Name of the Claimant

Compensation (in Rs.)

33 of 1970

MurariLalAgrawal

3,000/-

34 of 1970

Jamuna Prasad

6,500/-

35 of 1970

Ram Chandra

5,500/-

37 of 1970

Smt. RadhikaDevi

18,000/-

38 of 1970

Smt. ChunmunDevi

27,000/-

17. The award of the Claims Tribunal dated 8th February, 1975, gave rise to a number of appeals; six appeals by the Northern India General Insurance Co. Ltd., the insurer of the truck, six appeals by Ram Adhin Singh, the bus owner, and the remaining six appeals have been preferred by Mr. C.L. Chetwani, the truck owner. The claimants did not prefer any appeal. They have, however, filed cross-objections in all the appeals.

18. First, we take up the appeals filed by Ram Adhin Singh, the bus owner.

19. Mr. R.A. Sharma appearing for the bus owner, at the very outset, made a statement at the bar that he has been instructed not to press F.A.F.O. Nos. 163,

164, 165 and 166 of 1975. He confined his arguments only to F.A.F.O. No. 167 of 1975, Ram Adhin Singh v. Smt. Chunmun Devi and Ors., and F.A.F.O. No. 168 of 1975, Ram Adhin Singh v. Smt. Meenu Agrawal and Ors.. Therefore, the four appeals (F.A.F.O Nos. 163, 164, 165 and 166 of 1975) will have to be dismissed and we are concerned only with F.A.F.O. Nos. 167 and 168 of 1975.

20. The learned Counsel has contended that, at the most, it was a case of composite negligence on the part of the drivers of both the vehicles and, therefore, Tribunal should have apportioned the extent of negligence and then determined the liability of the owners of the two vehicles. In support of his contention he placed reliance on Prasani Devi v. State of Haryana and Ors. 1973 A.C.J. 531. In that case "both the drivers were found to be composite joint tortfeasors. The Punjab High Court held that the liability of the payment of compensation by the State of Haryana as owner of the bus extends to the whole of the amount that may be awarded, it being left to the State of Haryana to seek such contribution from such persons as it may deem fit.

21. Next, reliance was placed on Sushila Rani Sharma and Ors. v. Som Nath and Ors. 1974 A.C.J. 505. In that case also, it was found that the accident had taken place due to the negligent driving of the bus and of the jeep by Som Nath and Ram Singh respectively. That means that both of them were guilty of composite negligence in bringing about the accident. Where more than one person is concerned in the commission of a wrong, the person, who is wrong, has his remedy against all or any one or more of it at his choice. The wrong doer is liable for the whole damage and it does not matter whether they acted between themselves as equals. In our judgment, it was not necessary to apportion the degree of negligence between the drivers of the bus and the truck. Suffice it to say that the accident occurred due to the negligence of the drivers of both the vehicles. The Tribunal rightly fixed the liability of the bus owner and the truck owner to the extent of half and half. We are supported in our conclusion by the decision reported in Subhakar Sridhar Shastry v. Mysore State Road Transport Corporation 1975 A.C.J. 50. In case of contributory negligence, the liability was apportioned half and half on the ground that the bus driver was also guilty of negligence. In Subhash Chander and Ors. v. State of Haryana and Ors. 1975 A.C.J. 164, in case of contributory negligence the liability was apportioned at half and half. The first contention, therefore, cannot be accepted.

22. It was next contended that the quantum of compensation determined by the Tribunal was excessive. He referred to the Supreme Court decision in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , which laid down the factors to be taken into consideration while determining the compensation. Dealing with Section 1 of the Fatal Accidents Act, 1855, the Supreme Court observed:

In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but

must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death that is, the balance of loss and gain to a dependant by the death must be ascertained. The burden is certainly on the Plaintiffs to establish the extent of their loss. When the courts below have, on relevant material placed before them, ascertained the said amount as damages the Supreme Court cannot in second appeal disturb the said finding except for compelling reasons.

Similar principles were reiterated in *C.K. Subramonia Iyer and Ors. v. T. Kunhikuttan Nair and Ors.* 1970 A.C.J. 110. In that case, dealing with Section 1A of the Fatal Accidents Act, the Supreme Court laid down the following principles:

Compulsory damages u/s 1-A of the Fatal Accidents Act, for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority.

23. In *Smt. Neelima Arora v. Union of India and Ors.* 1977 A.C.J. 526, this Bench had reiterated the same principle. It was observed that the elements which must be considered in forming the assessment in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the amount for those very elements. Usually, the most important factors will be the age and expectation of working life of the deceased himself.

24. The Tribunal had assessed the compensation on the basis of the evidence on the record and no exception can be taken to the findings recorded by the Tribunal.

25. Lastly, it was contended that the Tribunal should have awarded interest. Section 110CC of the Motor Vehicles Act empowers the Tribunal to allow interest in its discretion, but if the Tribunal in its discretion chose not to allow interest, it cannot be said that the award is vitiated on that account. The Tribunal has given

cogent reasons for the assessment of compensation in each case and, in our opinion, no fault can be found in the award of the Tribunal on that account. In the result, all the appeals filed by Sri Ram Adhin Singh must fail.

26. Now, we take up the appeals filed by The Northern India General Insurance Co. Ltd., the insurer of the truck. Sri B.C. Dey, appearing for the insurer, based his argument on Section 94 of the Motor Vehicles Act. His contention was that the deceased and the injured were third persons for the bus within the meaning of Section 94 and they could not be third persons vis-avis the truck and, therefore, the only person, who can make a claim against the owner of the truck, is the owner of bus and not the passengers in the bus. Passengers in the bus are third parties qua the owner of the bus and the maximum damages the owner of the bus can recover from the owner of the truck is Rs. 20,000/- only.

27. Mr. R.A. Sharma, appearing for the bus owner, contended that Section 94 of the Motor Vehicles Act does not create or deal with the liability of either the truck owner or the bus owner, it only deals with the necessity of a policy of insurance by the vehicle owner and that is subject to contract between the parties. We find considerable force in the reply given by Mr. R.A. Sharma. Section 94 does not create any liability. All that it requires is that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. The contention raised by Mr. Dey, therefore, cannot be accepted for a moment.

28. No other point was raised.

29. This leads us to the appeals filed by the truck owner Mr. C.L. Chetwani.

30. The precise contention of Mr. Jagdish Swarup, assisted by Mr. B. D. Madhyan, is that the Tribunal should not have rest content by observing that the drivers of both the vehicles were negligent. He further submitted that from the materials on the record, it was evidently clear that the bus must be in high speed otherwise it would not have travelled after collision. As pointed out earlier, the Tribunal has recorded a clear and categorical finding that the accident occurred due to the negligence on the part of the drivers of the two vehicles. Both the drivers tried to keep their vehicles on the metal road. There was enough space even after the metal road and the truck driver could have swerved his truck to the left and the accident could have been averted. On the railway over bridge, the two vehicles could not pass together. The bus driver crossed the over bridge and he swerved his bus to the left to a certain extent, but the collision did take place and the Tribunal found that drivers of both the vehicles were equally guilty. On this finding, there is no escape from the conclusion that the liability of the bus owner and the truck owner was there. In our opinion, it was not necessary for the Tribunal to determine the extent of the negligence on the part of the bus driver and the truck driver. We are also not prepared to accept the contention

raised by the learned Counsel that the bus driver alone was negligent.

31. The witnesses produced in the case only stated that the bus was being driven at a high speed, but high or low speed is a relative term. Unless it was specified as to what was the speed of the bus at the time of the accident, it is difficult to say that the bus driver alone was negligent and not the truck driver. In the absence of definite evidence about the exact speed of the bus at the time of the accident, to hold the bus driver alone as negligent on the mere statements of the witnesses that the speed of the bus was high, would not be warranted by the materials on the record.

32. It was next contended for the Appellant that the owner of the truck had no duty to the passengers in the bus and, therefore, there is no liability on the truck owner and the truck owner could, if at all, be liable for all direct and immediate consequences of his wrongful act. He referred to Salmond's Jurisprudence and Winfield's Law of Torts and Clerk and Lindsell on Tort to contend that the drivers of the bus and the truck could not be held to be joint tortfeasors. Mere similarity of the design on the part of the tort-feasors causing damage is not enough. In *Deoki Devi Tiwari and Ors. v. Raghunaih Sahai Chatrath and Ors.* 1978 A.C.J. 169. A Division Bench of this Court had the occasion to deal with the point. They applied the rule laid down by Pollock in his book on Tort (at page 362):

Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled, of course, within the limits set by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damage.

They further observed:

We will follow and apply this rule to the present case. Pollock has further remarked:

The phrase "contributory negligence of a third person" which has sometimes been used, must therefore, be rejected as misleading.

33. The rule, quoted above, was applied in various cases *Manjula Devi Bhutta v. Manjushri Raha* 1968 A.C.J. 1. In *United India Fire and General Insurance Co. Ltd. v. Sayar Kanwar* 1976 A.C.J. 426, applying these principles, it was held that the negligence was that of both the drivers. Again in *Sushila Rani Sharma and Ors. v. Som Nath and Ors.* 1974 A.C.J. 505 it was held that both the drivers were composite or joint tort-feasors. The contention raised by Sri Jagdish Swarup, therefore, has no force and the appeals filed by the truck owners must also fail.

34. This leads us to the cross-objections filed by the claimants, in all the appeals. Mr. V. N. Agrawal, appearing for the claimants, contended that the amount of compensation determined by the Tribunal in each case was unduly low and the

claimants were entitled to a larger amount of compensation.

35. Mr. Dey raised a preliminary objection that cross-objection is not maintainable as it has been held by this Court in some unreported case. He, however, could not show any decision of this Court on the point. The preliminary objection is, therefore, overruled.

36. On merits we are satisfied that the amount of compensation determined by the Tribunal is adequate and has been determined after taking into consideration the entire evidence and the circumstances of the case and no exception, to our mind, can be taken to the amount of compensation determined by the Tribunal with which we fully agree.

37. Mr. V.N. Agrawal next contended that in some of the claims, there was loss of business and that should have been taken into consideration. The evidence on the record, however, does not show as to what was the actual loss. A vague statement that there was loss in the business is hardly sufficient to afford a basis for determining the actual loss. The Court on the basis of evidence available on the record, was not satisfied about the actual loss of income in the business and, therefore, the Tribunal was fully justified in recording the finding as it did and no exception can be taken to the finding recorded by the Tribunal. On merits, we find no force in any of the cross-objections.

38. No other point was argued on behalf of the cross-objectors.

39. For the foregoing discussions, we are fully satisfied that the finding recorded by the Tribunal is warranted from the materials and the circumstances of the case with which we fully agree. In the result, all the appeals and the cross-objections fail and are, accordingly, dismissed. In the circumstances of the case, the parties will bear their own costs.