

(1985) 02 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous First Appeal No. 193 of 1978

Sabira Begum and Others

APPELLANT

Vs

Raipur Transport Co. Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 25-02-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1986) ACJ 713 : (1987) 62 CompCas 373 : (1985) ILR (MP) 617 : (1985) MPLJ 426

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : N.K. Patel, for the Appellant; R.C. Khare, A.K. Pathak and A.G. Dhande, for the Respondent

Judgement

S. Awasthy, J.

This appeal has been preferred by the unsuccessful claimants in Claim Case No. 4 of 1976 before the Motor Accidents Claims Tribunal, Rajnandgaon, decided on January 16, 1978. The evidence has been recorded in Claim Case No. 4 of 1976 and the main award with reasoning is also passed in that case. Out of that accident, Claim Cases Nos. 2, 3 and 7 of 1976 were filed and disposed of by the said award.

The appellants had claimed compensation amounting to Rs. 1,78,000 on account of an accident which occurred on November 23, 1975, on Khairagarh-Rajnandgaon road to bus No. CPS 8937 belonging to the non-applicant-respondent No. 1 and insured with the non-applicant-respondent No. 2. M.A. Gani and two others died in the said accident. The applicant-appellant No. 1 is the widow and other applicants-appellants are the children of late M. A. Gani.

Late M.A. Gani was aged about 49 years on the date of the accident and was travelling in the bus No. CPS 8937 from Chhuikhadan to Rajnandgaon occupying the seat immediately at the back of the driver. He was an employee of the Bhilai

Steel Plant.

The learned presiding judge of the Motor Accidents Claims Tribunal, Rajnandgaon, dismissed the claim holding that the said accident did not take place due to any rash or negligent act on the part of the driver or the non-applicant No. 1. It was further held that the accident took place due to the bursting of the tyre of the right front wheel when the vehicle was being driven at the speed of 60 km. per hour. It was held that the accident was inevitable ; hence no liability of the non-applicants-respondents.

It is stated by the claimants that Ramkrishna Patil was driving the said bus and Noor Mohammed was its conductor at the time of the accident. Due to the speed of the bus, after the bursting of the tyre, the driver lost control and it went about 100 yards ahead and collided with a mahua tree at about 4.30 p. m. near village Dalli about 14 1/2 km. away from Khairagarh towards Rajnandgaon. The driver of the bus was also amongst the deceased persons. It is also stated that the tyre of the front right wheel of the vehicle was an old worn out one which burst due to the bad road and high speed. The vehicle could not be controlled by the driver thereafter. The negligence of the company was in not fixing a new tyre or such a tyre which should have been used on such road coupled with the speed with which the vehicle was driven.

Non-applicant No. 1 had denied the allegations of the applicant-appellants and stated that the speed was not above 60 km. per hour. The speed was moderate and as such the bus was within the control of the driver. It was also denied that the tree with which the bus collided was about 100 yards away from the place of bursting of the tyre. It was also denied that the tyre was old and worn out. It was stated that the bursting of the tyre was only an accident for which non-applicant No. 1 could not be held liable. The bus was being driven cautiously with moderate speed. The driver tried his best to save the lives of all the passengers and in doing so, lost his own life. It has also been pleaded that there were stone quarries in the vicinity of the road. Bullock carts and trucks carrying stones occasionally dropped some stones on the road which could be the cause of bursting of the tyre. Thus, the accident was claimed to be inevitable.

The case of non-applicant No. 2 is that of denial except that the bus was insured with non-applicant No. 2. It was stated that the liability, if any, is statutory, covered under the insurance policy.

The learned judge of the Motor Accidents Claims Tribunal accepted the defence of non-applicant No. 1 and dismissed the claim.

Learned counsel appearing for the claimants-appellants relied on the case, *Minu B. Mehta v. Balakrishana Ramachandra Nayan* [1977] 47 Comp Cas 736 ; [1977] ACJ 118 (SC) and urged that in order to succeed in a defence that the accident was due to the bursting of the tyre which is said to be inevitable, non-applicant No. 1 will have to prove that necessary precautions were taken and the tyre was in a roadworthy condition. The bursting of tyre occurred in spite of reasonable

care and caution taken by non-applicant No. 1. Such a plea must be raised to demonstrate that the defect was latent and non-discoverable by the use of reasonable care. The burden of proving that the accident was due to inevitable circumstances is on the owners of the bus and it is for them to prove that they had taken all reasonable care and that despite such care, the defect remained hidden. It is further submitted that non-applicant No. 1 has failed to discharge such burden and hence liable to pay the compensation. It was also urged that the principle of *res ipsa loquitur* would apply to the present case and the entire burden to show the condition of the tyre under the given circumstances was on respondent No. 1 which it failed to discharge.

Non-applicant No. 1, in reply, argued that the case relied on by the applicants is not helpful to them as the cause of accident was known to them which was the bursting of the tyre and it has been proved by evidence on record that the tyre was roadworthy. The speed of 60 km. per hour is not excessive. The owner had taken all necessary precautions. It was a new bus having good tyres. The principle of *res ipsa loquitur* is not applicable to the present case under the given circumstances.

The learned presiding judge of the Claims Tribunal relied on the register (exhibit 1 NA 1) produced by non-applicant No. 1 which is a daily report register maintained by Rajnandgaon branch of the non-applicant company from October 10, 1974, onwards till the date of accident. In this register, it is alleged that complaints lodged by the drivers of buses are recorded if there is any defect in the said bus. Necessary repairs were done after receipt of such report. Since there was no report entered in the register on November 23, 1975, concerning the ill-fated bus, the learned presiding judge of the Claims Tribunal held that late Ramakrishna Patil, driver, had no complaint regarding the tyre being unserviceable. Hence, the statement of Ramakant Pande (AW-1) regarding the alleged grumbling of driver, Ramakrishna Patil, about the tyre being unserviceable cannot be believed. He had further held that the bus was always checked prior to its being put on the road. Hence, the defect, if any, could have been noticed and mended. Further, non-applicant No. 1 produced a "tyre register" (exhibit 1 NA 4) in which the issue of tyres to different buses was entered. According to non-applicant No. 1, a tyre in a bus is changed after its use for 5-6 months. New tyres were always put in the front wheel and old ones were put in the rear wheels.

Mohammed Shafi (1 NAW 2) has stated that the tyre in the front wheel was in good condition and it would have run for 3-4 more months had it not burst. On page 8 of the said register, entries dated July 22, 1975, and August 29, 1975, show that 4 new tyres, two tyres on the aforesaid each date, were issued for the ill-fated bus. According to the learned judge, the tyre which burst was used only for 3 months ; hence, it was not an old, rotten or unserviceable tyre. He relied on the statement of Mohd. Shafi (1 NA W 2) who was the allotted driver of the ill-fated bus and disbelieved the statements of Martandsingh (AW 12), Ramakant

Pande (AW 1) and Guruvachansingh (AW 9) who were the passengers of the ill-fated bus and who had stated that the tyre was in a rotten condition. He believed the entry in the tyre register and also believed the statement of the Commissioner who had stated that about two furlongs away from the place of the accident towards Rajnandgaon, on both sides of the road, there were stone quarries. The aforesaid facts were held to be sufficient for reaching a finding that the accident was inevitable. We do not agree with the said finding.

In the written statement, in para 9, non-applicant No. 1 has stated :

* * * * In his pleading, no particulars regarding the condition of the tyre of the right front wheel are specifically mentioned. The claimants were not in a position to know that non-applicant No. 1 would lead evidence to the effect that the tyre was replaced in the month of July and was in a serviceable condition. All details regarding the registers maintained by the non-applicant company and also regarding the fixing of a new tyre with number, make and other details known to non-applicant No. 1 should have found place in his pleading. In para 15 of the written statement, non-applicant No. 1 has mentioned :

* * * * The absence of a specific pleading raises a doubt if the alleged registers were regularly being maintained. No reliance can be placed on such registers as no foundation was laid in the pleading. It was argued by learned counsel for the appellants that such an entry could easily be interpolated or a new register could be prepared showing some such entries therein. It was stated that the reason for not pleading these facts was apparently because at the time of the filing of the written statement, such material was not available with non-applicant No. 1. Even the number of the tyre which is alleged to have burst was not mentioned in the pleadings. The tyre, which was produced in the court, at the time of evidence, could also not be said to be the same as it was not confronted to Mr. Guruvachansingh, S. O., Dongergarh (AW-9) who had made the enquiry of the accident after receiving the report.

We rely on the statement of Guruvachansingh (AW-9) who is an independent witness and who had conducted the enquiry of the said accident. He stated in para 1 of his deposition :

* * * * There had been no cross-examination of the said witness regarding the above statement nor the presiding judge of the Claims Tribunal has discussed this evidence in this award.

Sajjan Singh Baghel (AW-11) was a passenger in the bus along with Martandsingh (AW-12). He has stated that the speed of the bus was about 70 to 80 kilometres per hour (that is his estimate). After the tyre burst, the bus went about 100 yards and collided with the tree. He saw after the accident that it was an old and rotten tyre. Martandsingh (AW-12) had pointed out to him that the tyre was rotten and old. Then he himself saw the tyre. Martandsingh (AW-12) has also corroborated him in all these particulars.

Ramakant Pande (AW-1), an advocate, has also supported the above-said two witnesses regarding the speed of the bus at the time of the accident and the condition of the tyre. He has further stated that the driver of the said bus had spoken to him that the tyre of the front wheel was bad, yet he had been deputed to drive the said vehicle on that day.

Looking to the condition of the tyre and the type of the road on which the ill-fated vehicle was plied, the speed even at 60 kilometres per hour was excessive. Non-applicant No. 1 cannot escape the liability by merely stating that the tyre was not very old or rotten. If non-applicant No. 1 was relying on a particular plea, he should have taken all precautions to plead all necessary particulars and lead such evidence which would have conclusively proved its case. We hold that non-applicant No. 1 has failed to discharge its burden and the accident itself demonstrates the negligence on the part of non-applicant No. 1.

We, therefore, differ from the finding recorded by the learned presiding judge of the Claims Tribunal and hold non-applicant No. 1 negligent for not putting a serviceable tyre on the right front wheel of bus No. CPS 8973.

Under the Motor Vehicles Act, the amount of compensation is to be what appears to the Tribunal to be just. The word "just" has a wider ambit than the words used in Sections 1A and 2 of the Fatal Accidents Act. The Tribunal, under this Act, has, therefore, only to consider what appears to it to be just compensation on the facts and circumstances of the case before it and need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act or under the English law as held in *Smt. Gulab Devi Sohaney Vs. Govt. of Madhya Pradesh and Another*, . The Tribunal may in deciding the "just compensation" bear in mind and apply general principle or principles laid down in such decisions, as far as they may be applicable and in so far as they may be applicable or promote the interest of justice on the facts and circumstances of each case. The compensation amount should be so assessed as to make provision for the legal representatives to receive or earn such pecuniary benefits as they should have obtained from the deceased if he had lived his normal life.

On the question of quantum of compensation, precedence may be relied upon to a limited extent as each case has to be decided on its own particular facts and circumstances and there can be no hard and fast rule for determining the quantum of compensation which may be awarded. (*Firm Kaluram Ram Narayan, Bilaspur Vs. Union of India (UOI)*, .

In calculating the pecuniary loss to the claimants what will be taken into consideration will be whether there was the prospect of a predominantly happy life and the compensation which is to be awarded is to be a reasonable figure to be paid by way of damages for the loss of prospective happiness : See *Smt. Kamla Devi and Others Vs. Kishanchand and Another*, . The loss for which the damages are awarded is pecuniary loss which would be sustained in the future.

But it is fallacious to assume that all human life is continuously an enjoyable thing so that shortening of it calls for compensation to be paid to the deceased's estate on a quantitative basis. The ups and downs of life, its pains and sorrows as well as its joys and pleasures, all that makes up "life's fitful fever" have to be taken into consideration in the estimate. The principle to be applied is that the Tribunal must be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which victims have been deprived by the negligence of the opposite party. (See *Benham v. Gambling* [1941] 1 All ER 7 (HL)).

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give the "datum or basic" figures which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, the widow might have remarried and thus ceased to be dependent and other like matters of speculation and doubt. The basis of the action is the pecuniary loss suffered by the dependants in consequence of the deceased's death.

Late M.A. Gani was aged about 49 years at the time of his death as deposed to by Abdul Hamid (AW-1), the elder brother of the deceased. According to him, he was a healthy person. Regarding longevity in his family, this witness has deposed that his father died at the age of 80 and his mother at the age of 49 years in the year 1929. He has also deposed that late M.A. Gani would not have received any pension after his retirement from service.

Mr. S.S. Babu (AW-2) deposed that late M.A. Gani was practising in homoeopathic medicines but, according to him, he was practising on no profit no loss basis. He himself took medicines from him twice and paid Re. 1 and 8 annas respectively. This shows that there was no income from homoeopathy practice. According to this witness, late M.A. Gani was receiving Rs. 814 as basic pay, Rs. 150 as dearness allowance and bonus in between Rs. 300 and Rs. 400 a month. This witness is also a storekeeper in the Bhilai Steel Plant working with late M.A. Gani in the same department. He had no knowledge about monthly deductions from the salary of late M.A. Gani.

Mohammed Abdul Mujib, claimant-appellant No. 2 has been examined as AW-3. He is the eldest son of late M.A. Gani, aged about 21 years. He was aged 19 years at the time of the death of late M.A. Gani. According to this witness, his elder sister, Abida Begum, is married. She is not a claimant in this case. The other sister, Aysha Begum, was aged about 16 years and the younger brother, Mohd. Abdul Qadir, was 14 years. According to him, his father was engaged in religious preachings apart from practising homoeopathy and the service. He had to remain out at least for 40 days in a year from his house and used to take leave for that purpose. He had to bear his own expenses when he used to go out for religious

preachings. He was a man of philanthropic nature and he used to help the poor with money. He is unable to say as to what proportion of his income he used to spend on his family. He is unable to say if his father had any bank account. The witness was earning Rs. 8"50 per day as a temporary recorder.

The learned presiding judge of the Tribunal had held that the monthly income of late M.A. Gani was Rs. 964 out of which he would have been spending Rs. 250 per month on himself and would have been contributing Rs. 700 towards his family and further that he would have worked till the age of 58 years in the factory. The learned presiding judge of the Tribunal has deducted an amount of Rs. 30,000, of two insurance policies, and Rs. 18,000, the amount of gratuity which became payable to the legal representatives of late M.A. Gani. The deductions so made are not permissible under the law. If any authority is needed, the Full Bench decision of this court in Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, may be referred to.

Since Mohd. Abdul Mujib was a major son and was earning his own livelihood, he was not dependent on late M.A. Gani. So far as the other two minor children are concerned, claimant No. 3, Aysha Begum, would have depended upon the earnings of M.A. Gani for about 4 years till her marriage and also claimant No. 4, Mohd. Abdul Qadir, for 4 years till attaining majority.

We hold that late M.A. Gani would have been contributing Rs. 700 per month to the family. Out of the said amount, Rs. 200 per month would be required for Mohd. Abdul Qadir who was prosecuting his studies and Rs. 200 per month for Aysha Begum who was to be married. The remaining amount of Rs. 300 must be deemed to be the share of the widow, Sabira Begum. She is aged about 45 years and we expect that late M. A. Gani would have attained the age of 65 years had he not died in the accident and would have given that much income to the house during his lifetime. The claimant, Sabira Begum, would have been about 60 years of age when the late M.A. Gani would have reached the age of 65 years and thus he would have contributed the amount of Rs. 300 per month to Sabira Begum for about 15 years. This amount comes to Rs. 54,000 payable to Sabira Begum, Rs. 9,600 to Aysha Begum and Rs. 9,600 to Mohd. Abdul Qadir. Since lump sum payment is being made, there must be made some deduction because of the accelerated benefit to the dependants. We feel that an award of Rs. 9,000 each to claimants Aysha Begum and Mohd. Abdul Qadir and Rs. 45,000 to Sabira Begum would be adequate compensation under the circumstances of the case. The Motor Accidents Claims Tribunal has, however, assessed the total compensation at Rs. 60,000 which we revise and hold that an amount of Rs. 63,000 in the proportion as mentioned above be payable to claimant-appellants Nos. 1, 3 and 4. Interest at the rate of 6 per cent. per annum from the date of this order till realisation of the amount shall be payable to the claimants by the respondents. The appeal is accordingly allowed with costs.

The expression "any one accident" appearing in Section 95(2) of the Motor Vehicles Act (No. 4 of 1939) is susceptible of two equally reasonable meanings or

interpretations. If a collision occurs between a car and a truck resulting in injuries to five persons, it is as much plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident. The accident would mean accident to each of them. Since each met with an accident, though during the course of the same transaction, the liability of the insurance company would extend to the maximum sum in respect of the injuries sustained by each of the five persons. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. If more than one person is injured during the course of the same transaction, each one of the persons has met with an accident. Reliance may be placed on Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi [1981] ACJ 507 ; [1982] 52 Comp Cas 454 (SC).

Out of the amount of compensation so assessed, Rs. 50,000 shall be payable by respondent No. 2 and the balance of Rs. 13,000 by respondent No. 1. The costs of this appeal and that of the lower court shall be payable by the respondents in proportion to the amounts awarded against them. Counsel's fee as per schedule, if certified.