
(1991) 09 MP CK 0011
In the Madhya Pradesh High Court

Sajjan Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-09-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 92A

Citation : (1992) 2 ACC 225

Hon'ble Judges : R.K. Verma, J

Bench : Single Bench

Judgement

R.K. Verma, J.—This order shall also govern the disposal of M.A. No. 223/85 Pradeep Kumar v. State and Anr. M. A.No. 225/85 (Maganlal v. State and Anr.) and M.A. No. 226/85 (Kuber Singh v. State and Anr.) which arise out of the same award made in Claim cases No. 19/84/47/84 and 20/84 respectively.

2. This is an appeal filed by the claimants Sajjan Singh and his wife Smt. Paribai against the Award dated 16.5.85 made in Claim Case No. 18/84 by the Motor Accident Claims Tribunal, Jhabua whereby the learned Tribunal has awarded a sum of Rs. 15,000/- as compensation on "no fault" principle u/s 92-A of the Motor Vehicles Act, as amended in 1982 in respect of the death of their son, deceased Babusingh in Motor accident which took place in the mid-night intervening 8th and 9th March, 1984,

3. The facts giving rise to this appeal and the other connected appeals are as follows:-

The deceased Babusingh S/o claimant Sajjansingh the injured Pradeepkumar S/o Pannalal, the deceased Dhannalal S/o Maganlal and the deceased Gajendrasingh S/o Kubersingh had gone with police constable in the police truck used for patrolling duty bearing registration No. MPP.1850 On return at Ambua the truck was loaded with sand which was required for the purpose of construction of Police-mess. The respondent No. 1 driver of the truck belonging to respondent No. 2 drove the truck at excessive speed. The driver lost control of the truck

which turned turtle. The deceased Babu Singh, the deceased Dhannalal, the deceased Gajendrasingh the injured Pradeep Kumar and some others were thrown out of the truck with the sand falling on them. In this accident, the injured Pradeep Kumar sustained injuries on his hand, shoulder and back and the deceased Babusingh, Dhannalal and Gajendrasingh succumbed to the injuries, sustained in the accident.

4. On claim petitions having been filed by the claimants in respect of the death of Babusingh, injuries to Pradeep Kumar and death of Dhannalal and Gajendrasingh against the constable driver Chhabilal and the owner of the police vehicle, the State Government, the respondents filed written statements and resisted the claim.

5. After trial the learned Tribunal held that the accident was not as a result of rash and negligent driving of the vehicle by the driver and as such, neither the driver nor the owner State was responsible for the accident. The learned Tribunal, however, awarded compensation of Rs. 15000/- on the principle of no fault liability u/s 92-A of the Motor Vehicles Act, in respect of the death of each of the three deceased persons viz., Babusingh, Dhannalal and Gajendra Singh. The claim of compensation in respect of the injuries of Pradeep Kumar was rejected.

6. The learned Tribunal found that the truck in question had turned turtle because of bursting of one of the front tyres of the vehicle and that the condition of the tyre and the vehicle was good at the material time. It also found that the three deceased persons viz., Babu Singh, Dhannalal and Gajendra Singh and the injured Pradeep Kumar-were not authorised to sit on the truck and as such neither the driver nor the employer State can be held responsible for the deaths and injuries caused in the accident. The learned Tribunal disbelieved the evidence on record to the effect that the injured Pradeep Kumar and the deceased persons Babu Singh, Dhannalal and Gajendra Singh had gone as labourers for leading the truck with sand.

Being aggrieved by the Award made by the learned Tribunal the respective claimants have filed this appeal and the other appeals M.A. Nos. 223,225 and 226 of 1985.

7. The learned Counsel for the claimant- appellants has submitted that the finding of the learned Tribunal on the question of negligence is apparently perverse and deserves to be reversed. The learned Counsel has pointed out the driver Chhabilal (NAW-1) has stated in para 9 of his deposition that he was not in a position to say definitely that the accident occurred due to bursting of the tyre. Learned Counsel has referred to the statements of Chensingh (AW-2), Bherulal(AW-3), Gule (AW-8) and Pradeep Kumar (AW-10) to show that each one of these witnesses stated that the truck in question was being driven by the driver at an excessive speed at the time of the accident when it turned turtle.

8. It has been suggested on the basis of the aforesaid evidence that since the

driver was rash in driving the vehicle at excessive speed, he could not exercise proper control and the vehicle turned turtle.

9. It has further been submitted by the learned Counsel for the appellants that even on the finding that the accident occurred due to bursting of a tyre of the running vehicle, the accident was attributable to the negligence on the part of the owner since the tyre which burst was an old one and no evidence has been adduced to show that the tyre was in roadworthy condition and was properly checked periodically. Learned Counsel in this connection has referred to the evidence of the driver Chhabilal (N.A.1 W.1) and the Motor Transport Officer Shyam Singh (NAW. 2 W.3) of the Police Line, Jhabua. The driver Chhabilal (N.A.1 W.1) has stated that the tyre in question was being used by him for the last six months and that it was virtually a new tyre. He also stated that the tyre lasts for one year. On the other hand, the Motor Transport Officer Shyamsingh (N.A.2 W.3) has stated on the basis of records that the tyre in question which had burst accidentally in police truck No. MMP 1850 on 8.3.84, was given for use in another vehicle bearing registration No. MMP.1441, on 20.3.1978 in new condition and that the said tyre was given for use in the truck No. MPP. 1850 on 8.3.84. It has, however, been stated by this witness that when the tyre was given for use in truck No. MPP 1850, the condition of the vehicle and the tyre were satisfactory.

10. From a reading of the aforesaid statements of the two witnesses it is apparent that they have in effect, given contrary version about the condition of the tyre. According to Shyamsingh (N.A.2 W.3), the tyre in question has been in use since 20th March, 1978 and as such it was not a new tyre as stated by Chhabilal (N.A.1 W.1). The tyre was new when given for use in another vehicle M.P.P. 1441 on 20.3.1978 and was sufficiently old by 8.3.1984 that is the date of accident when it was given for use in the offending vehicle No. MPP 1850. There is no evidence to prove that the vehicle and the tyre were being tested periodically as to its roadworthy condition. In these circumstances, it could not be held that the owner of the vehicle was keeping the vehicle and tyre in good repairs and was not negligent. The bursting of an old tyre without proof of periodical checks by the owner to test the road worthiness of the tyre can only lead to an inference of negligence on the part of owner of the vehicle.

11. According to the claim petition, the case of the claimants is that deceased Babusingh, deceased Dhannalal, deceased Gajendrasingh, injured Pradeep Kumar and Santosh etc. were engaged as labourers for loading the truck in question with sand, required in connection with construction of police Department mess and as such, the deceased persons and Pradeep Kumar had been carried on the truck to Abuam fetching sand. The respondent driver and owner of the truck denied the case of the claimants and pleaded that the deceased persons and Pradeep Kumar were gratuitous passengers, who were not authorized to board the truck and as such the respondents cannot be held liable for death and injuries caused to them in the accident due to overturning of the

truck. In this connection a perusal of the statements of Harisingh (AW.4) grand father of the deceased Gajendrasingh Maganlal (AW.5) father of the deceased Dhannalal, Sajjansingh (AW.6) father of the deceased Babusingh and Pradeep Kumar (AW. 10) shows that the truck in question was going to fetch sand and three deceased persons and injured Pradeep Kumar had gone on the truck as labourers for wages to load the truck with sand.

12. The fact that the truck was to bring sand is also stated by the respondent's witnesses namely Head Constable Ramsingh(A.W.5)and Constable Mangilal(N.A.W.6). Both these witnesses have stated that they were assigned duty by D.R.P. Line, Jhabua for patrolling on Jhabua -- Alirajpur Road on 8.3.1984 and they alongwith other constables had boarded the truck in question which was driven by the driver Chhabilal. It has also been stated by them that they were instructed by D.R.P. Line, Jhabua to fetch sand on their return. It is not disputed that sand was loaded on the truck from Chichlana Nala, near Ambua and was being brought for construction work of Police Mess and that when the truck turned turtle on return journey, the deceased persons came under the sand of the overturned truck and died as a result of injuries sustained in the accident.

13. The evidence of Harisingh (A.W.4), Maganlal (A.W.5) Sajjansingh (A.W.6) and Pradeep Kumar (A.W.10) establishes that the deceased Babusingh, Dhannalal, Gajendrasingh and the injured Pradeep Kumar had boarded the truck as labourers engaged to fetch sand. The fact that the sand was loaded on the truck and was being carried in the truck is also established from the statement of Head Constable Ramsingh (N.A.W.5) and constable Mangilal (N.A.W.6).

14. Head Constable Ramsingh (N.A.W.5) was the person incharge of the patrolling party of constables who had been assigned the duty of Road Patrolling between Jhabua and Alirajpur on 8.3.84, the date of accident.

15. It has, however, been stated by Ramsingh that the 3 deceased persons and Pradeep Kumar had been asked not to board government truck. But it is established that the three deceased persons and injured Pradeep Kumar were in the sand loaded truck at the time of the accident.

16. On a consideration of all the established facts and circumstances as aforesaid, I am inclined to believe the version of the claimants' witnesses that the deceased Babusingh, Dhannalal and Gajendrasingh and the injured Pradeep Kumar had gone in the truck No. MPP. 1850 as labourers engaged for loading the sand to be carried by the truck on its return journey.

17. As regards the issue of negligence leading to the accident, whether the truck overturned due to negligent driving of the driver at excessive speed or due to negligence on the part of the owner in allowing use of an old worn out tyre which had burst and caused loss of control of the running truck, the fact of overturning away from the road, is indicative of negligence and the maxim *res ipsa loquitur* applies and as such a case of negligent driving resulting in deaths of three persons and injury to one is made out. The contrary finding of the learned

Tribunal on the question of negligence is, therefore, reversed. The driver Chhabilal cannot be exonerated from the liability as has been done by the learned Tribunal wrongly.

18. As to quantum of compensation payable to the claimants in respect of death of the deceased Babusingh S/o claimant Sajjansingh, who was a student of Higher Secondary, aged about 24 years and in respect of the other two deceased Dhannalal and Gajendrasingh who were students of Class VIII and each aged about 15-16 years, the learned Counsel for the claimants has cited comparable two cases of this Court and one of Bombay high Court, reported in Kanhaiyalal and Another Vs. Dr. Anil Kumar and Another, ; Saraswati Bai Vs. Damodar Prasad and Another,) and Pandurang Narayandas Sarda Vs. Subhash Gopal Changale and Others, Relying on these decisions on the question of compensation in respect of death of young boys it has been prayed that an amount of Rs.40,000/- be awarded as compensation in respect of death of each of the deceased persons.

19. Following the decision of this Court in Kanhaiyalal's case (supra) and in the circumstances of this case I think that an amount of Rs.30,000/- shall be just and fair compensation in respect of the death of each of the three deceased persons Babusingh, Dhannalal and Gajendrasingh, As regards the injured Pradeep Kumar who is said to have sustained injuries as a result of the accident of his hand, shoulder and back and remained in the hospital for treatment of his injuries for a period of four days, it is not proved that he suffered any grievous injury or disablement. In the circumstances as amount of Rs.2000/- in my opinion, would be just and fair compensation to be awarded to the injured Pradeep Kumar.

20. The amount of compensation payable to the claimants in respect of the death of the above-named three deceased persons and the compensation payable in respect of the injured Pradeep Kumar, shall carry interest 12% per annum instead of 9% as awarded by the learned Tribunal from the date of the claim petition till realisation.

21. In the result, this appeal and the connected appeals M. A. No. 223/85, M. A.No.225/ 85 and M.A. No. 226/85 are partly allowed with costs and the Award of the learned Tribunal is modified accordingly inasmuch as the claimants shall be entitled to get compensation of Rs.30,000/- in respect of the death of each of the deceased persons namely, Babusingh, Dhannalal and Gajendrasingh instead of Rs. 15,000/- as awarded by the learned Tribunal and the injured Pradeep Kumar shall be entitled to a compensation of Rs.2000/- in respect of his injuries sustained in the accident. The respondents are held jointly and severally liable to pay compensation to the claimants in respect of each claim case. The amount of compensation awarded in each of these four appeals, shall carry interest @ 12% per annum from the date of the claim petition till realisation instead of 9% per annum as awarded by the learned Tribunal. Counsel's fee Rs.200/- in each of these four appeals, if certified.