
(1986) 02 MP CK 0007
In the Madhya Pradesh High Court

Sardar Mahendra Pal Singh and Another	APPELLANT
Vs	
Prakash Chand Goyal and Others	RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:

Evidence Act, 1872 — Section 101, 102

Citation : (1986) 2 ACC 265 : (1987) ACJ 677 : (1990) ILR (MP) 511 : (1987) 32 MPLJ 182 : (1987) MPLJ 182

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Judgement

B.M. Lal, J.

By this miscellaneous first appeal presented u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) the appellants who are the owner and driver respectively have challenged the award passed by the Motor Accidents Claims Tribunal (hereinafter referred to as the Tribunal) whereby a sum of Rs. 17,000/- has been awarded in favour of the claimants i.e. the present respondent Nos. 1 to 8.

The short facts leading to this appeal are as under : Late Shri Shikhar Chand Goyal (hereinafter referred to as the deceased) was running a business of cattle-feed (Bhusa), Coal and other articles. His business activity included transposition of cattle feed from Seoni to Bhilai and Coal/Charcoal from Bhilai to Seoni. For similar purpose on the fateful day of 6-6-1977, the deceased hired a truck No. MHG 3227 of which the appellant No. 1 is the owner and Appellant No. 2 is the driver and respondent No. 9 is the insurer.

After loading the truck with coal/charcoal at Bhilai, the deceased set on the truck. It is alleged that the truck driver indulged in rash and negligent driving with excessive speed, and as a result thereof he could not control the truck: consequently the truck met with an accident near Pendra village 5 kms. away from Rajnandgaon, and after hitting a culvert the truck turned topsy turvy. The

truck driver, left the place without noticing, among other things, that the deceased was buried under the tumulus coal.

However, when the coal was removed the dead body of the deceased was found. The matter was then reported to the police who registered a crime against the appellants.

On these facts the respondent Nos. 1 to 8 who are the legal heirs of the deceased filed a claim petition u/s 110-A of the Act before the Tribunal at Rajnandgaon claiming relief to the extent of Rs. 1,74,000/- as compensation on the grounds inter alia that the deceased was the only earning member in their family: at the time of death the deceased was only 50 years old and his monthly income was Rs. 600/- per month. In the claim petition it was also averred that the truck in question-MHG 3227, was insured with the respondent No. 9 who, however, shirked their responsibilities with regard to the claim of the respondent Nos. 1 to 8 submitted that in view of the provision of Section 95 of the Act and also the terms of the Insurance Policy, the Insurance Company is not legally liable to pay any compensation. The present appellants have also denied the liability and stated that it was not even in their knowledge as to how the deceased boarded the truck. They also gone to the length of saying that the truck was not hired by the deceased and also the coal loaded in the truck did not belong to the deceased.

On these facts the Tribunal exonerating the Insurance Company from the liability, awarded a sum of Rs. 17,000/- as compensation only against the owner and the driver of the truck, i.e. the present appellants, against which the present miscellaneous first appeal has been filed.

The respondent Nos. 1 to 8 have also filed cross-objection claiming a relief of enhancement of the compensation to the extent of Rs. 50,000/-.

The points for decision in the present appeal are as under:

(a) Whether the truck was driven rashly and negligently by the appellant No. 1 Sukhdeo which has resulted in the accident causing death of the deceased?

(b) Whether the liability which has been fastened on the appellants due to rash and negligent driving on the part of the driver of the truck could be indemnified by respondent No. 9, Oriental Fire & Genl. Insurance Company (hereinafter referred to as the Insurance Company)?

(c) Whether the deceased was travelling as a gracious passenger or in pursuance of a contract between him and the owners/driver of the truck?

(d) Whether the amount of compensation deserves to be enhanced in pursuance to the cross-objection as preferred by the present respondent Nos. 1 to 8?

After hearing the rival contentions of the counsels of appellants, respondent Nos. 1 to 8 and that of respondent No. 9, I have reached the conclusion that while dismissing the appeal-save to the extent that respondent No. 9, the Insurance

Company should indemnify the liability alongwith the appellants, the cross-objection preferred by the respondent Nos. 1 to 8 deserves to be allowed with an enhanced compensation amount.

As far as rashness and negligence of driving is concerned the learned tribunal vide para 13 of its judgment has discussed the point at length and has reached the conclusion that the truck in question was being driven rashly and negligently by the present appellant No. 2, Sukhdeo which has resulted into the alleged accident. Therefore, the owner of the truck, the present appellant No. 1 is vicariously liable to make good the damages. The learned Counsel for the appellants advanced his argument on the ground that there is no evidence to prove that the truck in question was being driven rashly and negligently and further submitted that to prove rash and negligent driving on the part of the appellant No. 2, the burden of proof lies upon the claimants which they failed to discharge.

While driving a truck on the highway, the duty of driving the vehicle with reasonable care and strictly observing the traffic regulations and rules of the road, is cast upon the driver. The driver also must keep a good look-out in all directions of the road. As such the driver of a vehicle owes a duty of all kinds of care. Appellant No. 2 in his statement has stated that a truck coming from the opposite direction was in excessive speed and with full-bloom light. It appears that this has dazzled the appellant No. 2, Sukhdeo with the result that he could not control his vehicle.

As a matter of fact when Sukhdeo had seen a truck coming from opposite direction with full-bloom light, he should have controlled the speed of his vehicle or he should have kept his vehicle stand still by the side of the road as it was well in his knowledge that the truck was loaded with coal and there could be every possibility of its turning topsy turvy. Therefore, when the appellant No. 2 deposed to this extent the question of discharging the burden of proof by the respondents/claimants does not arise.

However, the burden of proof has two distinct meanings:

- (i) as a matter of law and pleadings: and
- (ii) as a matter of adducing evidence;

For this Sections 101 and 102 of the Evidence Act are relevant. Section 101 of the Evidence Act deals with the former and Section 102 with the latter. As such the first remains constant when the second shifts: therefore, the burden of proof in the first sense does lie upon the claimants. In the instant case the claimants have discharged the burden of proof for the reason that appellant No. 2 stated that the truck from opposite direction was coming with full bloom light and this supports the case of the claimants that this was the cause of the accident. Therefore, in my opinion, the Tribunal has not committed any mistake either in appreciating the evidence on this point or in construing the proposition of law

relating to burden of proof, and has rightly reached the conclusion that the truck in question was being driven rashly and negligently for which the owner of the truck is vicariously liable for making good the damages.

Normally it is for the claimants to prove the negligence on the part of the driver but as in some cases considerable hardship is caused to the claimants as to the true cause of the accident is not known to them but is solely within the knowledge of the driver who caused it, the claimants can prove it but cannot prove how it happened to establish negligence on the part of the non-claimants/driver. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. In the instant case the appellant No. 2 has deposed that the truck with full bloom light coming from the opposite direction in high speed was the cause of the accident. Thus the accident speaks for itself and tells its own story and, therefore, it is sufficient for the claimants to prove the accident and nothing more: whereas that has been proved by the claimants and, as such, now it is for the present appellant No. 2 the driver to establish that the accident happened due to some other cause than his own negligence.

Therefore, applying the aforesaid maxim-*res ipsa loquitur*, the burden of proof now, in the instant case, lies on the appellants to show either that the appellant No. 2 was not negligent or that the accident might more probably have happened in a manner it do not connote negligence on his part. But the appellants/non-claimants have failed to discharge the burden and therefore, it is proved that the accident which took place due to rashness and negligence on the part of Appellant No. 2, the driver.

Now for dealing with the controversies at rest, the relevant part of Section 95 of the Act be set out here:

(1) In order to comply with the requirements of this chapter, a policy of insurance must be a policy which-

(a)

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)

(i) against any liability which may be incurred by him in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public:

(emphasis supplied)

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to, any such employee.

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises?.

In this context certain more provisions which are relevant for the decision of this case are also required to be set out.

Section 2(8) of the act defines "Goods Vehicles" as under:

Goods Vehicles means any motor vehicle constructed or adapted for use for the carriage of goods or any other vehicle not so constructed or adapted when used for the carriage of goods, solely or in addition to passengers.

Similarly u/s 2(23) of the act definition of Public Carrier is also prescribed. But the definition prescribed u/s 2(8) of the Act i.e. that of Goods Vehicle, specifically defines and demonstrates that passengers are also allowed alongwith the goods in a vehicle. The words used in the definition "in addition to passengers" qualifies that passengers are also allowed.

Now, in this context, the rules framed under the Motor Vehicles Act in Madhya Pradesh which are known as M.P. Motor Vehicles Rules, 1974 (hereinafter referred to as rules) are also relevant. Rule 111 reads as under:

111. Carriage of persons in goods vehicles:

(1)

(2) No person shall be carried in the cab of a goods vehicle beyond the number for which there is seating accommodation at the rate of thirty-eight centimetres measured along the seat for each person excluding the spare reserved for the driver, and not more than-

(i) six persons in addition to the driver in any goods vehicle other than light transport vehicle;

(ii) three persons in addition to the driver in any light transport goods vehicle:

(iii) one person in addition to the driver in the light transport goods vehicle having registered laden weight less than nine hundred kilograms.

Therefore, it is clear that to the extent of six persons maximum in addition to the driver in any goods vehicle other than light transport vehicle are allowed.

This position is not disputed that the truck involved in the instant case was a goods vehicle as described u/s 2(8) of the Act. Therefore, six persons are allowed to travel in the goods vehicle as defined under Rule 111. Now in the light of Section 95(1) (b) of the Act proviso (ii) read with definition in Section 2(8) and Rules 111, it would certainly be a legitimate inference to extend benefits to all those persons who by reasons of or in pursuance of contract of employment are required to travel on the vehicle. This also stands to reason that risk to body or life of a passenger who, on proved position, is not a gracious passenger but is under an obligation to travel in the insured vehicle by reasons of or in pursuance of contract of employment would, definitely be covered by insurance.

The next question is that when a owner of the goods hires a vehicle for transportation of his goods it becomes necessary for him that alongwith the goods the vehicle should carry some persons for supervision of the carriage of goods; for loading and unloading of the goods or for similar other purposes. For such purposes, the owner of the goods either may engage some employee or he may do so himself by accompanying the vehicle himself alongwith goods, and in pursuance with contract of "hire of carriage" if the owner of the goods travels along, the owner of the goods in such circumstances remains no longer a gracious passenger but by virtue of the contract reached between him and the transporter, it shall be deemed that he is travelling for some consideration. In such cases, there should be & liability on the carriers towards the owner of the goods. Even in general Law of Torts, it is this liability sought to be covered by the provisions of Section 95(1) of the Act. Therefore, Policy to cover the risk of life by accident in such cases would promote social justice as could be envisaged if the aforesaid harmonious interpretation is given to the provisions of Section 95(1) of the Act read with the definition given in Section 2(8) of the Act and Rule 111.

From the discussions aforesaid, now it has to be seen whether the deceased in the instant case was travelling with the carrier ? A look at the Exhibit P-13 amply demonstrates that the deceased used to engage truck for transporting coal from Bhilai to Seoni, and to prove this fact only this P-13 (Bill of coal) has been filed. In support of this submission, on behalf of the claimants, P.W. 6--Prabhat Chandra Goyal was examined, who vide para 5 of his statement deposed that his father was carrying on the business and while transporting Bhusha from Seoni to Bhilai, used to transport coal from Bhilai to Seoni. The other relevant statements of P.W. No. 2, Birdi Chand Goyal: P.W. 4. Badriprasad: P.W. 5, Phulendra Jha: go to prove this fact, which has not been successfully controverted by the present appellants. Therefore, from the evidence on record it could safely be reached to the conclusion that on account of contract of Hire of carriage for the purposes of

transportations of coal from Bhilai to Seoni, the deceased was travelling in the truck in question and not as a gracious passenger: and under such circumstances where it is proved that out of the contract of hire of carriage the owner of the goods or his authorised agent was travelling in the truck as permitted under the rules (*supra*), the insurance company cannot escape its liability to make good the damages caused to the dependents of the deceased.

In *Nasibdar Subba Fakir v. Adhia and Co. and Ors.* 1983 ACJ 264 Bombay High Court held that injury to hirer of goods-vehicle when he is a passenger in the same vehicle due to negligence of the driver-insurer of the goods vehicle is liable to such passenger for payment of compensation for the reasons that the hirer was carried by the owner or the driver of the truck for reward.

In *Izzard v. Universal Insurance Co. Ltd.* 1937 A.C. 773. The House of Lords had occasion to construe Section 36 of the British Road Traffic Act, 1930. This provision is analogous to our Section 95 of the Motor Vehicles Act, 1939. In this case certain builders engaged a commercial vehicle which was insured for haulage purposes, for haulage work and for conveyance of their workmen between certain places. Izzard was one among the workmen who were carried on the lorry while the same met with an accident. It was argued before the House of Lords that while Izzard was in the employment of the builders, he was not in the employment of the insured, and therefore, should not be said to have been a passenger in the lorry "by reason of or in pursuance of contract of employment."

While delivering the judgment, the House of Lords also held that:

the insured person may come under third party liability to such a man who may be described as being in the position of an invitee in the legal sense, vis-a-vis the insured person. A further illustration which comes under the same category is that of an employee or employees of the owner of the goods which are being carried, who go out on the lorry with the goods and return home in the lorry after the goods are delivered. Such employees may be properly be regarded as passengers carried in pursuance of a contract with some one other than the insured person.

The learned Counsel appearing for the respondent No. 9, the insurance company, relying on the Supreme Court decision in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, argued that insurance policy of the truck, in view of the provision of Section 95(1)(b)(ii) of the Act, does not cover the risk of a deceased and, therefore, negligent driving on the part of the driver of the truck cannot be indemnified by the insurance company.

In *Pushpabai's* case (*supra*) the Manager of the respondent company was driving the car belonging to the company, and gave a lift to the deceased Udeshi during which the car met with an accident owing to the negligence of the driver/manager. The insurance company with whom the car was insured repudiated its liability under the policy contending that the deceased Udeshi was being carried

in the car not for hire or reward. After construing Clause (ii) of the proviso of Section 95(1) of the Act. Their Lordships of the Supreme Court observed that:

...it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

In the Pushpabi's case (supra) this was an admitted position that the car was being used for carrying deceased Udeshi not for hire or reward. Whereas in the instant case the deceased had hired and engaged the truck for loading and transporting coal from Bhilai to Seoni and in pursuance to that contract he was travelling in the truck which is also permissible under Rule 111 supra. Therefore, the ratio laid down in Pushpabi's case (supra) has no application to the facts of the instant case as it is distinguishable on facts.

In Patharibai Karansingh and Ors. v. Firulalji Shankerlal and Ors. 1984 MPLJ 84 Division Bench of this Court held that liability of insured vehicle used for carriage of goods carrying employee of the person whose goods were being transported for lifting the goods at destination?death of such person as a result of an accident heirs of the deceased entitled to be paid compensation by the insurance company.

In the instant case also the deceased had hired and engaged the truck for transporting coal from Bhilai to Seoni and in pursuance to that contract he was travelling in the truck, and therefore, his heirs are entitled to be paid compensation by the insurance company.

From the aforesaid discussions, I am of the opinion that when the hirer of goods vehicle for carriage of his goods is travelling in the said truck in pursuance to the contract, the permission or consent of the Driver for such travelling with the vehicle is implicit and, therefore, he must be deemed to be a passenger on the vehicle for reward within the meaning of proviso (ii) of the Section 95(1)(b) of the act. Hence, the tortious liability of the owner towards the said passenger must be covered by the insurance policy as envisaged by the said provision: thus, the appellants and the insurance company, Respondent No. 9 are jointly and severally liable to make good the damages caused to respondent Nos. 1 to 8, in the instant case.

From the aforesaid discussions, the appeal filed by the owner of the truck and the driver has no merit and deserves to be dismissed save to the extent that respondent No. 9, the Insurance company should indemnify the liability alongwith appellant Nos. 1 and 2.

Now considering the cross objection preferred by the claimants/respondent Nos. 1 to 8, the question would be--whether the amount of compensation deserves to

be enhanced ? No doubt, the evidence led by the claimants before the tribunal goes to show that at the time of death the deceased was only 50 years old and the hereditary longevity trend of the family of the deceased is about 70 to 75 years. To this effect advocate Birdi Chand Goyal brother of the deceased, has categorically stated in his statement that his father died at the age of 75 years. His paternal aunt, died at the age of 72 years. Similarly, other witnesses have deposed to this effect. The present appellants neither controverted this statement nor put any question during the cross-examination. Therefore, the longevity trend of the family of the deceased may well be held as 70 years. In recent decisions of the Supreme Court of India also, the longevity trend in India has been held between 65 to 70 years. But in the instant case if the longevity trend of the deceased's family is taken as 70 years, then certainly the deceased could have carried on his business atleast upto his age of 65 years.

As far as the earning of the deceased is concerned, there is a specific pleading and evidence that the deceased was earning about Rs. 600/-per month on an average. However, the tribunal on its own assumption held the earning of the deceased as Rs. 300/- per month, which according to me appears to be erroneous. The claimants have led positive evidence to show that the deceased was earning Rs. 600/- per month on the other hand, with a meagre sum of Rs. 300/- it could not be possible for the deceased to maintain so large a family consisting of nine members. However, as a logical consequence let us presume, and it would also be proper to hold, that the deceased was earning Rs. 500/- per month out of which he might have been spending Rs. 100/- per month on himself and Rs. 400/- for his family members/dependents. Therefore, it can well be held that the family of the deceased has sustained a loss of Rs. 400/- per month for 15 years, that is to say, (Rs. 400/- ? 12 months ? 15 years = Rs. 72,000/-) a total sum of Rs. 72,000/-; for lump sum payment this amount may be taken as 50,000/-. Out of this 50,000 a sum of Rs. 17,000/- has already been awarded. Therefore, the amount of compensation deserves to be enhanced by Rs. 33,000/- thereby making the respondent Nos. 1 to 8 entitled to get a total compensation to the tune of Rs. 50,000/-.

However, still a question about the interest remains to be answered, As envisaged u/s 110-CC of the Act, there is a provision for awarding interest if a claim is allowed and the maximum rate of interest can be allowed @ 14% per annum from the date of application before the tribunal. The courts in such cases are vested with discretionary powers to award interest. In the instant case applying the principle of natural justice, there is no reason as to why the claimants should be deprived of interest on the compensation amount awarded to them. Therefore, I am of the opinion that interest @ 8% per annum be awarded from the date of the application before the tribunal i.e., 23-11-1977, till realisation of the amount.

From the discussions aforesaid, while dismissing the appeal to the extent as indicated above, the cross-objection of the respondents Nos. 1 to 8 is allowed

with cost. The award passed by the Tribunal is thus modified and is hereby enhanced by Rs. 33,000/- thereby making a total compensation of Rs. 50,000/- against the appellants and respondent No. 9 who are jointly and severally liable to make good the damages caused to respondents Nos. 1 to 8 on account of the death of late Shaikharchand Goyal. The amount of award shall also carry an interest @8% per annum from the date of original application before the claims tribunal i.e. 23-11-1977 till realization. Counsel's fee Rs. 1,000/- if certified.