

(1984) 11 BOM CK 0068
In the Bombay High Court

Savitri Devi Obhan and Another

APPELLANT

Vs

Anasuyabai and Others and P.K. Reddy and Others

RESPONDENT

Date of Decision : 09-11-1984

Acts Referred:

Citation : (1985) 1 ACC 273

Hon'ble Judges : Vaze, J; Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—As in both these appeals common questions of law and fact were involved, they were heard together and are being disposed of by this common judgment.

2. It is an admitted position that an accident took place on 6th of June 1969 by about 8 45 p.m. In the said accident Patri Venkata Ramanayya lost his life and the driver of the car Shri P.K. Reddy also received injuries. The dependants of late Ramanayya filed a claim before the Motor Accidents Claims tribunal for Greater Bombay claiming an amount of Rs. 4 lacs as compensation. Shri Reddy the driver of the car also claimed compensation for the injuries received by him. After appreciating all the evidence on record the learned Member of the Tribunal granted an amount of Rs. 1,53,000/- as compensation to the dependants of late Ramanayya and a sum of Rs. 3,200/- to Shri P.K. Reddy together with interest at the rate of 6% per annum from the date of filing of the application till realisation. It is these awards which are challenged in the present two first appeals.

3. It was the case of the claimants that a lorry bearing No. 6351 collided with the car driven by Reddy when Ramanayya was sitting on the rear seat of the car. A lorry bearing No. BYR-6454 had stopped ahead of the offending lorry before entering the Sion Railway Yard. The driver of the offending lorry Shri Pande disregarding all traffic rules and carelessly and negligently drove his lorry and dashed against the motor car smashing its right side. The impact was so great that the pole in-between the two doors on the right side of the said motor car was also smashed and the left rear door was forced open and deceased was

thrown out of the car and the deceased received fatal injuries. Thus according to the claimants the accident took place by reason of the negligence on the part of Shri Pande the driver of the lorry No. BMR 5357 and hence they are entitled to claim compensation.

4. The averments made by the claimants in the application were denied by the opponents. It was contended by the opposite party No. 2 that he was not driving the lorry at an excessive speed rashly and recklessly, and/or negligently. According to him the accident took place as the motor car driver had not taken due care and caution while driving the car. The opposite party No. 2 also contended that because of the slippery condition of the road and inspite of due care the motor car collided into the motor lorry and therefore accident took place because of the rash and negligent driving of the motor car driver. In support of their respective cases the parties examined their witnesses. After appreciating all the evidence on record the learned Member of the Tribunal came to the conclusion that the driver Pande drove his lorry rashly and negligently and, therefore accident took place because of his rash and negligent driving alone. The learned Member further held that the claimants had proved their claim for compensation and hence the Tribunal passed an award granting the compensation which is the subject matter of these appeals.

5. Shri Apte the learned Counsel appearing for the appellants contended before us that the learned Member of the Tribunal committed an error in coming to the conclusion that the accident took place because of the rash and negligent driving on the part of the lorry driver Shri Pande. According to him the accident took place because the road had become slippery and as the car was not driven with due care and caution by Shri Reddy, the car driver. He also contended that in any case the quantum of compensation awarded is excessively high.

6. With the assistance of the learned Counsel appearing for both sides we have gone through the entire evidence on record. To say the least we generally agree with the appreciation of evidence as well as findings of fact recorded by the learned Member of the Tribunal, and therefore, it is not necessary to reproduce the whole evidence over again or to restate the reasons in support of the said findings. From the bare reading of the evidence of Shri Reddy, the car driver it is quite clear that he was driving his car on his left cautiously after taking due care. According to Shri Reddy he was driving the Ambassador Car No. MRD 3456 and coming from Kurla to Sion side via Agra Road. His master deceased Patri was in the car sitting on the back seat on the left side. He saw one lorry coming from Sion side and the lorry driver was attempting to swerve to the right and turn to the right to enter Sion Railway Yard. The lorry slowed down while turning towards right and Shri Reddy blew horn. The lorry driver stopped and he gave the witness hand signal to proceed further to Sion. Finding that the road was clear and he was given clear signal, Reddy moved further towards Sion. When he just reached the gate of the Sion Railway Yard he saw another lorry coming from the Sion side and he felt that it hit the first the lorry which had stopped and then

it swerved suddenly to the right, that is, towards the gate of the Sion Railway Yard. Thereafter it hit the car driven by Reddy on its right side. According to this witness Shri Pande was driving his vehicle with high speed. After the accident the witness became unconscious. The main effort in the cross-examination was to discredit the witness on the basis of the statement recorded by the police on the date of the accident itself. The learned Member of the Tribunal after going through the evidence of the witness, evidence of the doctor and the police officer, came to the conclusion that the witness was not in a position to make any statement on the 6th June 1969 and, therefore the alleged statement produced before the court is concocted one. We have gone through the evidence of the police officer as well as the alleged statements of the witnesses. From evidence of witness Reddy as well as the evidence of Pande it is quite clear that immediately after the incident the witness became unconscious. This clearly shows that the witness was not in a position to make any statement. Further the statement attributed to the witness by the police is so worded that it appears to be improbable that Shri Reddy might have made such a statement. In these circumstances we agree with the learned Member of the Tribunal that the statement attributed to Shri Reddy, which is styled as police statement is wholly incredible and on that basis his testimony cannot be discarded.

7. This is not the end of the matter. From the evidence of Shri Pande the driver of the offending truck, it is more than clear that it was he who was driving the truck rashly and negligently. He admitted in his deposition that in front of his lorry, there was another lorry No. BMR 6454. It was about 200 ft ahead of him. The lorry ahead of him had also to turn and go inside Sion Railway Yard. The lorry turned and then stopped. The front lorry had come to the centre of the road and then stopped. According to the witness it was drizzling and raining a little and there was mud on the ground. As the lorry ahead stopped he applied breaks so his vehicle slipped and went to the right side. When he applied brakes the lorry ahead of him after swerving upto the middle of the road had come to a dead stop. At that time also he was 200 ft away from the first lorry. He applied brakes. His vehicle moved to the right of the front lorry and left side of his lorry came in touch with the right side of the front lorry which had come to a dead stop. Then his vehicle slipped towards right and again came towards left and hit the front lorry which had stopped completely. After the collision between his lorry and the other lorry, hardly two minutes had passed when the car came from Kurla side and dashed against his lorry. This is the version of Shri Pande about the accident. It is hard to believe this version. Shri Pande has admitted that the lorry which was ahead of him was 200 ft away. It is quite clear from his evidence that inspite of this he tried to overtake it and came to the extreme right side of the road which was not expected of him. The car coming from the opposite direction was on the left side of the road. Reddy turned his car because he was given green signal. As a matter of fact it was the duty of the truck driver Shri Pande to stop his vehicle behind the vehicle which was standing stationary ahead. Instead of doing this, he took his vehicle to the extreme right side of the

road which is obviously wrong side of the road and dashed against the motor car. For this obviously the car driver cannot be blamed. It is Shri Pande who alone can be blamed for this accident. The cock and bull story attempted to be made out at the stage of evidence about his vehicle slipped etc. is hard to believe, and accept. He also contended that he had seen the car at least 100 metres away from him coming from Kurla Side. Thus he saw the car coming from the opposite direction and lorry was standing ahead of it and was a stationary one. In spite of this he drove his vehicle recklessly and negligently which ultimately resulted in the accident in which the deceased Ramanayya died on the spot. Therefore, in our view, the learned Member of the Tribunal was wholly justified in coming to the conclusion that the accident took place solely because of the rash and negligent driving of Shri Pande, the opposite party No. 2. In this view of the matter, we have no hesitation in confirming the said finding of the Tribunal.

8. So far as the quantum of compensation is concerned, the learned Member of the Tribunal has considered this aspect of the matter in para 24A of his judgment. From the evidence of the widow as well as the certificate produced by the Company's servant, it is quite clear that apart from the salary the deceased was also getting commission and on that basis the learned Member of the Tribunal was quite justified in coming to the conclusion that the loss of the family must be to the tune of Rs. 30,000/- per annum. It is an admitted position that Shri Ramanayya was the General Manager of Sepulchre Brothers (India) Ltd. and there was no age limit for retirement, so far as his employment is concerned. He was aged 59 years when the accident took place. Therefore he could have safely earned for another 10 years. Therefore 10 years multiplier used by the learned Member of the Tribunal cannot be termed to be on the higher side. After calculating the total compensation on that basis the learned Member has awarded 50% of it as total compensation which in no case could be termed to be on the higher side. In our view the compensation awarded could safely be termed as just and fair. Obviously while making 50% deduction the learned Member took into consideration the age of the deceased and uncertainty of his life etc. as well as the lump sum payment. In this view of the matter in our no interference is called for even with the quantum of compensation awarded. So far as Shri Reddy is concerned a paltry amount of Rs. 3,200 is awarded to him. Hence on that count also no interference is called for.

9. In the result therefore both the appeals fail and are dismissed with costs.

10. However, it is made clear that the lower court will have to pass appropriate order about the investment of the amount awarded to each of the claimants in tune with the decision of this Court in Nav Bharat Builders and another Vs. Pyarabai and others, The claimants to approach the trial court for the necessary orders. The opposite party Nos. 1 and 2 to deposit the balance amount within a period of two months from today, failing which the amount shall carry interest at the rate 10% per annum till realisation.