

(1985) 12 MP CK 0035

In the Madhya Pradesh High Court

Case No : M.A. No's. 26 and 55 of 1981

Shivlal and Others etc.

APPELLANT

Vs

Smt. Rukmabai and Others

RESPONDENT

Date of Decision : 17-12-1985

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2

Motor Vehicles Act, 1939 — Section 110B, 95, 96(2)

Citation : (1987) ACJ 341 : AIR 1986 MP 228 : (1988) 64 CompCas 418 :
(1987) JLJ 153

Hon'ble Judges : K.L. Srivastava, J;G.G. Sohani, J

Bench : Division Bench

Advocate : B.K. Samdani, for the Appellant; Jaisingh and N.S. Purohit, for the Respondent

Judgement

K.L. Srivastava, J.—This order shall also dispose of the Misc. Appeal No. 55 of 1981 filed by the Insurer against the one and the same award dated 17-11-.1980 passed by the Motor Accident Claims Tribunal Ratlam in Claim Case No. 16 of 1977.

2. It may be stated at the outset that the appeal No. 26 of 1981 is by the owners of the accident vehicle and the other appeal is by the insurer. The claimants have filed cross-objections.

3. For the purpose of these appeals it is no longer in controversy that the tractor bearing Registration No. MPU 5571 belonging to Shivlal and Kanhaiyalal (the appellants in appeal No. 26/81) was involved in an accident and had turned turtle at about 11.30 a.m. on 24-4-77 on the road between Bibdod and Ratlam ahead of the culvert from Sagod. At the time of the accident the vehicle was being driven by Shivlal and was insured (vide Ex. P/3) with the appellant in M. A. No. 55/81. Laxminarayan an agriculturist aged about 50 years who was travelling by the tractor which had been brought to his field in connection with the boring of well there had met instant death as a result of the accident. The respondent

Rukmabai is the widow of the said Laxminaryan and the minor respondents Radheshyam and Jagdish are his sons.

4. According to the petition, the accident had occurred due to the negligence of Shivalal who at the relevant time was driving the tractor at excessive speed and had lost control over it when he was faced with a cow on the road. It was stated in the petition that the deceased was an agriculturist and also a milk vendor and used to make a net income of Rs. 5,000/- per year and looking to the history of longevity in the family, he would have lived up to the age of 90 years. Claim for compensation was laid as under : --

(1)

Towards financial loss due the premature death.....

Rs. 1,40,000.00

(ii)

Towards expenses for Misar

Rs. 5,000.00

(iii)

Towards mental agony to the claimants.

Rs. 5,000.00

Total : ?

Rs. 1,50,000.00

5. The two owners of the vehicle and its insurer filed separate written statements. According to the owners, the deceased had forcibly taken a seat in the tractor and the accident was not occasioned due to any negligence on the part of Shivalal. The quantum of compensation claimed was also challenged.

6. The insurer denied its liability on the ground that the policy did not cover the risk of gratuitous passenger on the vehicle.

7. At the conclusion of the trial, the learned Tribunal held that the aforesaid accident was occasioned due to the negligence of Shivalal. Determining the annual dependency of the aforesaid L.Rs. at Rs. 2,000/- per year, a net amount of Rs. 32,000/- was awarded against the appellants after deduction at the rate of 15% on account of lump sum payment.

8. Aggrieved by the award, the insurer and the owners have preferred the aforesaid appeals. The L.Rs. of the deceased Laxminarayan have preferred cross-objection and have prayed for enhancement of the sum awarded.

9. The points of determination are as under : --

(i) Whether the learned Tribunal erred in holding that the accident was occasioned due to the negligence of the appellant Shivilal?

(ii) Whether the learned Tribunal erred in holding that the insurer is liable for compensation?

(iii) Whether the amount awarded is too low and requires to be enhanced.

10. The learned counsel for the appellants in M.A. 26/81 contends that on the question of negligence there is variance between pleading and proof and the learned Tribunal has erred in recording a finding about negligence, on the part of Shivilal. He urges that according to the petition, the accident had occurred as a cow had come on the road and the driver of the vehicle was unable to control it due to excessive speed. The evidence of Susheel Kumar (P.W. 2) however, is that he had not sighted any cow at the time of the accident and the tractor had turned turtle as it was being driven at an excessive speed and the driver while bowing to the God Hanuman in the temple by the side of the road, had folded both his hands leaving the steering. Shiv Dayal (P.W. 3) has stated that he was following the tractor and his attention was drawn to the situation afterwards as a result of the sound of the tractor turning turtle.

11. The version of Shivilal (D.W. 2) at the trial is that a cow had suddenly emerged on the road and in order to save it he had swerved the tractor to another side and had again tried to bring it on the proper side and as a result of the consequent jolt, the victim had caught hold of the steering of the vehicle and, therefore, it could not properly be brought on the road and had turned turtle.

12. It is pertinent to point out that immediately after the accident Shivilal had lodged a report of the occurrence at the police station at Manik Chowk Ratlam vide Ex. P/3. The self serving version which Shivilal would have us to believe at the trial does not find place in that report. Bhagirath (D.W. 3) the only other witness examined by Shivilal on the point is no other than his own servant.

13. It is well settled that the liability for compensation is founded on negligence. Normally from the mere happening of a motor accident, negligence on the part of the driver cannot always be presumed in each and every case. Therefore, normally it is for the claimants to prove negligence. But there is an exception to this normal rule. Where the accident is such that it attracts the doctrine of *res ipsa loquitur*, the mere proof of accident raises a rebuttable presumption of negligence. In this connection the Supreme Court decision in *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, is pertinent. Where the happening in the context of the surrounding circumstances is such as does not occur in the ordinary course of things without negligence on defendant's part, in other words whenever it is improbable that the accident would have happened without the defendant's negligence it is for the driver of the vehicle to explain as to how the accident occurred without negligence on his part. In such a situation the accident speaks for itself or tells its own story and, therefore, the claimant

after proving the accident is not required to prove negligence and it is for the defendant to prove that the accident happened due to some other cause than his own negligence. As pointed out in the Supreme Court decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, this doctrine avoids the hardship caused to the plaintiff where the true cause of the accident is not known to him but is solely within the knowledge of the defendant who had the control and the management of the accident vehicle and had caused the accident.

14. It is certainly the duty of a person who drives a vehicle on the highway to use what is reasonable care under all the circumstances to avoid causing harm or damage to others. Ordinarily skilful driver is expected to avoid excessive speed, to keep a good lookout and to observe traffic rules and signals.

15. It may also be pointed out that in evaluating evidence for a conclusion on the question of negligence, the standard of proof required in a criminal trial is not to be applied and broad view on the basis of probabilities is the proper approach.

16. In the instant case, a heavy vehicle like the tractor had turned turtle and normally such a thing does not happen with a careful driving. The applicability of the maxim *res ipsa loquitur* is clearly, therefore, attracted in this case and there is no credible material to rebut the presumption of negligence. We, therefore, hold that the learned Tribunal committed no error in coming to the conclusion that a negligence on the part of Shivalal was the cause of the accident.

17. It is well settled that the insurer's liability is limited to the statutory minimum required by Section 95(2) of the Act. The policy taken to cover the required minimum is generally referred to as an Act policy. The law does not require that contract of insurance as respects goods vehicle must also cover risk to the passengers. The Supreme Court decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, relates to the death of a passenger in a Car. In para 22, the Supreme Court observed as under : --

Therefore 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.

18. In the D. B. decision in Manguba's case (1982) 2 MPWN 193 this Court had observed to the following effect :--

"As regards the liability of the insurance Company, it was not disputed before us that the truck in question was not a vehicle in which passengers were carried for hire or reward. Learned counsel for the appellants failed to satisfy us that the insurance company could be held liable either by virtue of the provisions of

Section 95 of the Act or by the terms of the insurance policy. There is nothing on record to show that the policy of insurance covered the liability in question even though it was not required to be covered under the provisions of Section 95 of the Act."

In the D.B. decision in *New India Assurance Co. v. Mehrunnisa* (1983 Jab LJ 21) it has been held that the liability of the insurer has to be decided in accordance with Section 95 of the Act or the terms of the policy and Rule 111 of the M. P. Motor Vehicles Rules 1974 does not affect the provisions of Section 95. Rule 111(1) reads thus : --

"Rule 111(1). Save in the cases of a vehicle which is being used for the carriage of police (public?) or a stage carriage in which goods are being carried in addition to passengers no person shall be carried in goods vehicle other than a bona fide employee of the owner or the hirer of the vehicle, or the owner or the hirer and except in accordance with this rule."

It was held that the insurer was not liable in respect of the death of the owner of goods travelling in the goods vehicle. In the D.B. decision in *Thakurbai's case* 1983 MPWN 355 according to the policy the goods vehicle was to be used only under a public carrier's permit and use for conveyance of passengers for hire or reward was not covered, it was held by this Court that in respect of the death of a passenger in the truck, the insurer was not liable irrespective of the fact whether he was being carried gratuitously or for hire. In the S.B. decision in *Chameli Devi's case* 1982 Jab LJ 290 the contention that the insurance policy in respect of a goods vehicle did not prohibit carrying of passengers as such but only prohibited carrying them for hire or reward was negated as involving violation of permit condition and also of the trust which is the basis of the contract of insurance.

19. The contract of insurance in this case was as per terms and conditions embodied in Ex. D-1. Thereunder the accident tractor was to be used only under a public carrier's permit under the Act. The policy expressly prohibits use of the vehicle for conveyance of passengers for hire or reward and in consideration of additional premium covers the risk of only two categories of the employees of the insured. It may also be pointed out that u/s 96(2)(b)(i) of the Act the insurance company is entitled to avoid its liability if the vehicle is used in contravention of specified condition of the permit.

20. We are aware of the D. B. decision in *Patharibai's case* 1985 Acc CJ 526 : (AIR 1985 M&P 103) where this Court holding that the contract of employment occurring in proviso (ii) to Section 95(1)(b) of the Act need not necessarily be with the insured alone, held the insurer liable where the death of a labourer of the hirer of the truck had taken place while being carried in the truck. In this connection the decisions in *Abdul Razak's case* 1984 Acc a 44 : (AIR 1983 All 400) and *Ramesh Kumar's case* AIR 1979 M&P 124 are also pertinent.

21. The conflict of judicial opinion noted in *Patharibai's case* (supra) need not

however, detain us. In the instant case, the deceased Laxminarayan cannot be said to be travelling in the tractor by reason of or in pursuance of a contract of employment. There is nothing to indicate that he had hired the tractor or had goods to take care of. Therefore, the ratio of the decision in Patharibai's case (supra) is not attracted. Laxminarayan was, on the material on record, a gratuitous passenger and in view of the decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, his risk was not required to be covered u/s 95 of the Act and the absence of any terms in the policy of insurance covering the risk of such a passenger, no liability can certainly be fastened on the insurance company. We hold accordingly.

22. This brings us to the question of adequacy of the award.

23. u/s 110-B of the Act, the Tribunal is required to make an award determining the amount of compensation which appears to it to be just. The provision has a wider ambit than the words under Sections 1A and 2 of the Fatal Accidents Act.

24. 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 any precise mathematical calculation. It has rightly been observed that in the assessment of compensation arithmetic is a good servant but a bad master. Fall in the purchasing power of rupee has also to be kept in view in determining the amount of compensation.

25. One of the methods of assessing damages is by finding out the amount of annual dependency i.e. the multiplicand and the number of years' purchase i.e. the multiplier and it was adopted in this Court's decision in State of M.P. v. Devi Ramat 1981 Jab LJ 42 : (AIR 1981 M&P 173).

26. On a careful consideration of the material on record, we find that the amount of compensation awarded by the learned Tribunal is adequate. It is certainly not such as to require any interference.

27. In the result, the Misc. Appeal No. 26 of 1981 by the owners of the accident vehicle is dismissed. The Misc. Appeal No. 55 of 1981 by the insurer is allowed. The award so far as it directs payment of compensation, interest and costs by it is set aside. The award shall stand accordingly modified. The cross-objection by the claimants fails and is dismissed. In the circumstances of the case, it is ordered that costs in this Court shall be borne by the parties as incurred.