

(1974) 05 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous First Appeal No. 138 of 1970

Smt. Vidya Devi and Another

APPELLANT

Vs

Madhya Pradesh State Road Transport Corporation and
Another

RESPONDENT

Date of Decision : 02-05-1974

Acts Referred:

Central Provinces Laws Act, 1875 — Section 6
Motor Vehicles Act, 1939 — Section 110D, 78

Citation : (1974) ACJ 374 : AIR 1975 MP 89 : (1974) J LJ 483 : (1974) 19 MPLJ 573 : (1974) MPLJ 573

Hon'ble Judges : K.K. Dube, J;G.P. Singh, J

Bench : Division Bench

Advocate : R.K. Nanhorya, for the Appellant; Dilip Naik, for the Respondent

Final Decision : Partly Allowed

Judgement

G.P. Singh, J.

This is an appeal u/s 110-D of the Motor Vehicles Act, 1939. On 24th July, 1968 there was an accident in Jabalpur at the crossing of two roads which will be referred to as Katni road and Stadium road. Katni road goes from bus stand to Katni and Stadium road from Shahid Smarak to the Stadium. The vehicles involved in the accident were Bus No. M. P. K. 5033 owned by the Madhya Pradesh State Road Transport Corporation and a motor-cycle driven by Inderjeet Singh. The bus, which at the relevant time was driven by Corporation's driver Abdul Bashir, came from the bus-stand and was proceeding towards Katni. The motor-cycle came from Shahid Smarak side. It collided with the front portion of the bus on the right hand side. Inderjeet Singh sustained fracture of the skull in this accident and died soon thereafter in the hospital. The deceased's widow Vidya Devi and infant son Amarjeet Singh applied to the Claims Tribunal, Jabalpur, for award of compensation. The Tribunal held that the claimants failed to prove negligence on the part of the driver of the bus and the facts and

circumstances of the case established that the deceased himself was negligent. On this finding the Tribunal dismissed the claim. The claimants have, therefore, come up in appeal.

The first question in this appeal is: whose negligence was the real or substantial cause of the accident? There are three possible answers to this question: (1) The driver of the bus was alone responsible for the accident; (2) the deceased alone was responsible; and (3) both were responsible, as negligence of both substantially caused the accident. The question is essentially a question of fact and the answer must necessarily depend upon the evidence and circumstances of the case.

Before evaluating the evidence, certain principles have to be kept in mind. In cases where negligence of the parties is contemporaneous or so nearly contemporaneous as to make it impossible to say that either could have avoided the consequences of the other's negligence, both parties would be held to have substantially caused the accident; *Swadling v. Cooper*, 1930 All ER 257 at p. 260 (HL). When two vehicles are so moving in relation to one another as to involve risk of a collision, the driver of each vehicle owes a duty to move with due care to avoid any collision; *Nance v. Brit. Columbia Elec. Ry Co.* (1951) 2 All ER 448 at p. 450 (PC). A reasonably careful driver does not always assume that other users of the road, whether drivers or others, will behave with reasonable care and he guards against the negligence of others when experience shows such negligence to be common; *London Transport Executive v. Upson* (1949) 1 All ER 60 at pp. 70, 72 (HL). It is the duty of the driver of a vehicle to keep a good look-out for other traffic, especially at road crossings, junctions and bends; [Charlesworth, *Negligence*, 5th edition, p. 495). Every driver of a motor vehicle is required by Section 78 of the Motor Vehicles Act to drive in conformity with the driving regulations contained in the Tenth Schedule to the Act. Regulations 6 and 7, which are relevant for our purposes, read as follows :

"6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

The driver of a motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand."

The evidence relating to the accident produced by the appellants consists of three witnesses, namely, Vijay Singh (P. W. 3), Suraj (P. W. 4) and Nathulal (P. W. 5). The respondents examined two witnesses, the driver Abdul Bashir (D. W. 1) and the conductor Sanad Kumar (D. W. 2). The evidence of the driver is to the effect that the deceased came riding the motor-cycle from Shahid Smarak side and collided with the bus on its right hand side over the right front wheel. The

appellants" witnesses also stated that the motor-cycle came from Shahid Smarak side. They were, however, unable to say as to what portion of the bus came in contact with the motor-cycle. Only Natthulal (P. W. 5) stated that the motorcycle collided with the front head-light of the bus on the right hand side. The appellants' witnesses further deposed that as a result of the impact, the motor-cycle and the deceased dragged on the road upto a distance of about 30 cubits and the deceased was found lying under the motor-cycle. None of the witnesses stated that the motor-cycle came under the wheels of the bus or that the bus hit the same from behind. Suraj (P. W. 4) in his evidence stated that the motor-cycle, after it came upon the intersection, turned towards right and at that stage the impact occurred. But this does not appear to be correct, for had the accident taken place as described by this witness, the motor-cycle would have been hit from behind by the bus and the impact would not have been with the right side of the bus. As regards speed, the evidence of the driver is that the bus was running at a speed of 10 miles per hour and the motorcycle came at an excessive speed and because the deceased could not control the motorcycle it collided with the bus. Natthulal (P. W. 5) also stated in his evidence that the bus was running at a moderate speed. Suraj (P. W. 4) and Natthulal (P. W. 5) both stated that both the vehicles had blown the horn while approaching the crossing. There is no evidence that either of the roads were designated as main road, but the learned counsel for the appellants has not disputed before us that Katni road is a main road as held by the Tribunal.

It is clear from the evidence mentioned above that the motor-cycle was coming not at a moderate speed and the deceased wanted to cross the intersection before the bus could cross it. The deceased was coming from a side road and ought to have allowed the bus to pass which was proceeding on the main road. The very fact that the motorcycle after the impact dragged on the road with the deceased for about 30 cubits shows that its speed was not moderate and the deceased was not able to control it. In our opinion, the deceased was negligent for his own safety and his negligence substantially contributed to the accident. But the question still is: was not the driver of the bus also negligent? Now the driver did not in his evidence state that he kept a look-out for the traffic coming from the side road. He did not state at what point of time he first saw the motor-cycle before the impact. He did not also state that it was not possible to see the motor-cycle approaching the intersection even if he kept a good look-out for the traffic approaching from the side road. Experience shows that sometimes vehicles suddenly come from a side road although it is not reasonable for their drivers to do so. Had the driver of the bus kept a good look-out, it is quite possible that he would have seen the motor-cycle coming from the side road and possibility of a collision occurring would have been reasonably apparent to him and he could have stopped his bus in time to allow the motor-cycle to pass in front of him and the accident may have been averted. Having regard to these factors, we are of opinion that the driver of the bus was also negligent in not keeping a good look-out while approaching the intersection. Negligence of both

the parties was contemporaneous as to make it impossible to say with any definiteness that either could have avoided the consequences of the other's negligence and both parties must be held to have substantially caused the accident. In somewhat similar circumstances *Havers, J., in Lang v. London Transport Executive* (1959) 1 WLR 1168 held that the driver of the bus and the motor-cyclist were both responsible for the accident. But he held that the motorcyclist was far more to blame than the bus driver and he apportioned the blame in the proportion of two-third and one-third. We are in respectful agreement with this decision and we will also apportion the blame in the same proportion in the instant case if we have power to do so.

The next question is whether the defence of contributory negligence is available to the respondents so as to non-suit the appellants or whether we can apportion the blame and allow the claim of the appellants in proportion to the blame shared by the respondents for the accident. Under the old common law rule if the plaintiff's negligence contributed in some degree to the accident his action entirely failed even though the defendant was more at fault. This law continued till the Laws Reform (Contributory Negligence) Act, 1945, which abolished the defence of contributory negligence and enacted provisions which enable the Court to allow the claim by reducing it to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage. This Act of the British Parliament does not extend to India and the Indian Parliament has not so far enacted a corresponding law. So the problem before us is whether we should continue to apply the common law existing in England before 1945 or whether we can apply the principles contained in the English Act of 1945.

The Indian Courts in the absence of any specific law are enjoined to decide cases "according to justice, equity and good conscience." The relevant statutory provision, so far as Mahakoshal region in this State is concerned, is Section 6 of the Central Provinces Laws Act, 1875. The expression "justice, equity and good conscience" has been interpreted to mean "the rules of English law if found applicable to Indian society and circumstances"; *Waghela Rajsanji v. Shekh Masluddin* (1887) 14 IA 89 at 96 (PC). Sir Frederick Pollock prepared a draft code of torts for India but it was never enacted into law. The law of civil wrongs in India is almost wholly the English law which is administered as rules of "justice, equity and good conscience." [See Setalvad, *The Common Law in India*, original edition, p. 110]. The Indian Courts, however, before applying any rule of English law can see whether it is suited to Indian society and circumstances. The application of the English law in India as rules of justice, equity and good conscience has, therefore, been what Setalvad calls a "selective application." The learned author quotes a number of illustrations where the Privy Council and the Indian Courts refused to apply rules of English law as they were unsuitable to Indian conditions; (*The Common Law in India*, pp. 53 to 56). Further, in applying the English law on a particular point the Indian, Courts are not restricted to the common law. The English law consists both of common law and statute law and

the Indian Courts can see as to how far a rule of common law has been modified or abrogated by statute law of England. There is no doubt a presumption that a rule of common law is in consonance with justice, equity and good conscience. But how can that presumption continue if the country of its origin has itself rejected the rule and has made new rules in its place. If the new rules of English law replacing or modifying the common law are more in consonance with justice, equity and good conscience, it would be open to us to reject the outmoded rules of common law and to apply the new rules. It is on these principles that this High Court in AIR 1937 354 (Nagpur) refused to apply the doctrine of common employment in so far as it was abrogated by the Employers' Liability Act of 1880. In that case Stone, C. J. observed as follows:

"I am of the opinion however that in considering what is to-day consonant to justice, equity and good conscience one should regard the law as it is in England to-day, and not the law that was part of the law of England yesterday. One cannot take the Common Law of England divorced from the statute law of England and argue that the former is in accordance with justice, equity and good conscience and that the latter which has modified it is to be ignored to-day in England, so far as this case is concerned."

***** "It is true that in considering what the Common law of England is, one has not to look at the statute law of England; but the law of England is composed of both, and one seeks guidance when determining what is justice, equity and good conscience not by looking at a particular branch of the law in England, but by looking at what is the law of England at present in force, and even then one is not compelled to apply that law unless one is of the opinion that bearing in mind the circumstances as existing in India today, that law can according to justice, equity and good conscience be here applied."

On the same point Niyogi, A. J. C. in the same case said:

"Any Court in India which takes recourse to the Common law of England and seeks to apply its principles to India cannot afford to ignore the extent to which the Common law stands abrogated by statute."

***** "It, therefore, appears to me that it is manifestly anomalous and illogical to apply, in the name of justice, equity and good conscience, to India the doctrine of Common law which is no longer regarded at its source as fair and equitable and enforced as such."

The defence of contributory negligence that a plaintiff who is only partly to blame for the accident cannot recover any damages is on the face of it illogical. Although many explanations are given of this rule, its origin was more probably due to procedural and pleading anomalies of the old common law. Lord Wright in an article in Modern Law Review said on this point as follows:

"The precise explanation of this curious rule, that the plaintiff who is in any way at fault cannot recover anything from the principal wrong-doer, seems to have

been that the common law courts could not, or would not, apportion in pieces the damage contributed to, both by the plaintiff and the defendant, as the Admiralty Court did. It has been suggested in one place that the purpose was moral, namely to inculcate care; or it may have been a scholastic but fallacious attempt to apply in strict formal logic, the principle that *causa proxima*, or the last cause, is what is to count. It was, however, more probably due to procedural and pleading points, like other anomalous parts of the old common law. The plaintiff could declare upon the defendant's negligence, as in *Davies v. Mann* (1842) 10 M & W 546 or nuisance, as in *Butterfield v. Forrester* (1809) 11 East 60. Against that declaration, the defendant would plead the general issue, simply the words "not guilty", and that was a sufficient plea to entitle him to show that the accident was in part due to the plaintiffs own negligence; thus the plaintiff who had alleged that the accident was due to the defendant's negligence failed." [13 MLR 5].

Lord Wright further tells us that as long back as 1887 Fry, L. J., a great Judge, demanded why the Court could not be empowered to divide the loss; [13 MLR 2.] In *Sparks v. Edward Ash. Ltd.* (1943) 1 KB 223 at p. 230. Scott, L. J. referred to the "harsh and often cruel bearing of our common law doctrine of contributory negligence" and stressed the need for early law reform. The reform, as already stated, came by legislation in 1945. Even before it the Admiralty Courts had power to apportion the blame under the Maritime Conventions Act, 1911, which is applicable to India. Should we then continue to apply the doctrine of contributory negligence in India as a rule of equity, justice and good conscience when it has been rejected in the country of its origin being a harsh and cruel doctrine of the common law? Our answer is clearly in the negative. The principle of apportionment enacted in the English Act of 1945 is more in consonance with justice, equity and good conscience and since we can look to the English law as it is, we must apply this principle in place of the old rule of contributory negligence. We are happy to note that a similar view was taken by Krishnan, J. C. in *State v. Lalman Badri Prasad* AIR 1954 MP 17 at p. 24 and a leading Indian text book also commends this view; (See, S. Ramaswami Iyer, *The law of Torts*, Sixth edition, p 447).

Now, coming to the damages, the deceased at the time of his death was aged 28 years. He left behind a widow aged 18 and an infant son aged six months. A Hindu widow with a child has little chance of remarriage. The widow's dependency will last for the whole of the remainder of the working life of the deceased. The infant son will continue to be dependent for at least 20 years. The deceased was a mechanic. The motor-cycle which he was riding had in fact been received by him for repairs. According to the evidence of the widow the deceased was also having a side business of selling milk and foodgrains and in all he was earning Rupees 600/- per month. This appears to be somewhat an exaggeration. In our opinion, the deceased's net earnings were approximately Rs. 250/- per month. He must have been spending Rs. 150/- per month on his wife and child. The annual dependency thus comes to Rs. 1800/-. Applying the multiplier of 18

the total compensation payable to the dependents, had the deceased himself not partially contributed to the accident, would have worked out to Rupees 32,400/- (See -- Smt. Kamla Devi and Others Vs. Kishanchand and Another,). But as the deceased was himself to blame for the accident to the extent of two-third, it would be fair and just to reduce the damages to Rs. 10,000/-and this is the amount which the appellants are entitled to get from the respondents.

The appeal is partly allowed. The award made by the District Judge is set aside and in its place we award a sum of Rupees 10,000/- which shall be paid by the respondents to the appellants. There shall be no order as to costs throughout.