

(1994) 03 BOM CK 0064
In the Bombay High Court
Case No : F.A. No. 550 of 1975

State of Maharashtra

APPELLANT

Vs

Gulabi Sudhu and Others

RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1995) ACJ 965

Hon'ble Judges : I.G. Shah, J

Bench : Single Bench

Advocate : S.G. Page, Govt. Pleader, for the Appellant; K.S.V. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

I.G. Shah, J.—The State of Maharashtra, the owner of the vehicle involved in the accident, has preferred this appeal against the order and judgment awarding Rs. 50,000/- as compensation with interest at the rate of 6 per cent per annum from the date of filing of the application till payment in favour of the present respondents who have filed the application u/s 110-A of the Motor Vehicles Act to claim compensation on account of death of Sudhu Gupta, the husband of the present respondent No. 1, father of respondent Nos. 2 and 3 and the son of respondent Nos. 4 and 5.

2. Briefly stated, the facts giving rise to the present appeal are as under:

Sudhu Gupta admittedly met with an accident on 13th Road, Aarey Colony, Goregaon, on 1.9.1974 at about 10.30 a.m. as a result of dash given to him by a tractor bearing No. MRX 3644 belonging to the present appellant and driven by its employee. Sudhu Gupta was walking by the left side of the road. The tractor belonging to the present appellant came from behind and dashed against the deceased resulting in fatal injuries to the deceased. The respondents-claimants alleged that the said tractor was being driven in a rash and negligent manner

and the driver of the tractor had not blown the horn and was actually looking behind and, therefore, the accident took place. The deceased was working as a labourer and it is claimed that he was earning about Rs. 15/- per day. It is also claimed that he was maintaining his two children, wife and parents. It is also claimed that the deceased was of the age of 35 years at the time of his death. The respondents, therefore, claimed that as deceased died as a result of rash and negligent driving by the driver of the tractor who was an employee of the present appellant, the appellant is liable to pay claim of Rs. 50,000/- as compensation.

3. The present appellant filed its written statement and refuted the liability. The appellant also contended that the appellant was not aware of the facts appearing in paras 3, 4, 5 and 6 of the application of the claimants. The appellant also contended that the claim of the claimants was exorbitant. It also appears that the additional written statement was also filed subsequently by the present appellant contending therein that the place where the accident took place is a private road of Aarey Milk Colony and the deceased was a trespasser and, therefore, was not entitled to any compensation or damages as the deceased himself was negligent and had unauthorisedly trespassed on the private property and private road of the appellant.

4. On the strength of the evidence led before the Motor Accidents Claims Tribunal, the Tribunal came to the conclusion that the driver of the tractor who was the employee of the present appellant was responsible for causing fatal injuries to the deceased and that the said injuries were caused as a result of rash and negligent driving by him. The Tribunal also concluded that though the place where the accident took place was the property of the appellant where Aarey Milk Colony is established and may not be considered as a public road but as the public were allowed to use and pass through the said property, the fact that the said property was a private property of the appellant did not make any difference and, therefore, the contention of the appellant that as the deceased was a trespasser, he was not entitled to any compensation does not make any difference. The Tribunal also found on the strength of the evidence of the wife of the deceased that the deceased was of the age of 35 years at the time of his death and was at least earning Rs. 300 per month as wages by working as a labourer and even if it is assumed that he was spending about Rs. 100/- per month for himself, he was spending about Rs. 200 per month on his family out of his wages. On the basis of this, the Tribunal concluded that the deceased normally would have lived for another 35 years and, therefore, if from his earning he was spending Rs. 2,400/- per annum for his family then in 35 years he would have earned at least Rs. 75,000/- which he would have spent for his family. The Tribunal also took into consideration that as a lump sum amount was to be paid by way of compensation, the said amount of Rs. 75,000/- would be required to be reduced and accordingly awarded only Rs. 50,000/- to the claimants.

5. On behalf of the appellant, the only argument tried to be advanced is that the deceased was actually passing through the private property of Aarey Milk Colony belonging to the present appellant and, therefore, was a trespasser and the Tribunal was in error in brushing aside the said factor. The contention tried to be raised is that if the deceased was a trespasser he was himself responsible for the accident that had resulted. The argument can never be accepted. Even if a person is passing through a private property the driver of the vehicle has got to be mindful of the persons walking on the road provided in the said property and if negligence can be attributed to the driver of the vehicle and it is due to the driver's negligence that the accident has resulted, the driver as well as the owner of the vehicle would be responsible for paying compensation to the victim of the accident. The Tribunal has also considered this aspect about the deceased being in the property of the present appellant at the time of the accident and has after giving reasons concluded that the said factor did not make any difference as far as the liability of compensation of the present appellant is concerned.

6. I have also considered the evidence on record and found that the Tribunal was right in holding that the deceased was at least earning Rs. 300/- per month and must be spending about Rs. 200/- per month for his family members. The Tribunal was also right in holding that the deceased normally would be expected to live up to about 70 years of age and, therefore, the family would have got the support of the earning of the deceased for that period and, therefore, the Tribunal has rightly come to the conclusion that the claimants would be entitled to compensation of Rs. 50,000/-.

7. In the appeal memo the appellant has also taken a ground that the driver of the vehicle has not been made a party and on that count the application needs to be thrown out as necessary party is not before the Tribunal. First of all, this question was not raised in the written statement at all. Apart from this, the provision of the Motor Vehicles Act does not make it obligatory that the driver must be made a party. What is required is only that the name of driver is to be disclosed if it is known. If the name of the driver is not known then it may not be possible for the claimants to disclose it. It is, in fact, for the owner of the vehicle to disclose who was the driver at the time of the accident. Under these circumstances, the said ground tried to be raised in the appeal for the first time has no substance. Hence, the appeal has no merit and the same will have to be dismissed with costs.

8. It is necessary to mention before, parting with the judgment that the accident in the present case took place on 1.9.1974. The claimants applied for compensation on 5.9.1974 and the Tribunal passed the order granting compensation on 11.7.1975 and the appeal came to be filed in 1975 and was admitted on 25.10.1975 and since thereafter it was pending till this date. During this period, it appears that the said appeal was dismissed for default and thereafter it was required to be restored. But still nearly 19 years have elapsed after the filing of the present appeal and in this period unfortunately wife of the

deceased and the father of the deceased have died and it also appears that though no stay was granted by this court while admitting the appeal, the claimants have not been paid the amount by the present appellant. This is a sad story of delay, of course. As a matter of fact, I cannot but mention that this was an appeal which the State Government ought not to have filed at all taking into consideration the facts of the case. If the State Government also files such appeals resulting in such gross injustice, I do not know to whom the people should look. I need not express anything more than what I have mentioned above. Hence the order.

9. The appeal stands dismissed with costs. The amount of compensation be equally distributed between the claimants, heirs of claimants who are now before the court as some of the claimants have died during the pendency as stated earlier and their heirs are already brought on record.