

(1988) 05 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 255 of 1984

State of M.P. and Others

APPELLANT

Vs

Ashadevi and Others

RESPONDENT

Date of Decision : 07-05-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : AIR 1989 MP 93 : (1989) JLJ 541 : (1988) MPLJ 346

Hon'ble Judges : S.K. Dubey, J;P.D. Mulye, J

Bench : Division Bench

Advocate : Kulshrestha, for the Appellant; B.K. Samdani, for the Respondent

Judgement

S.K. Dubey, J.

This appeal u/s 110D of Motor Vehicles Act 1939 shall also govern the disposal of other ten Misc. Appeals No. 256/84 (State of M.P. v. Smt. Prematabai Wd/o Shivpratapsingh), 258/84 (State of M.P. v. Jeetendra Kumar Singh, Minor through guardian Rameshwar Singh) 259/84 (State of M.P. v. Shahjadi Wd/o Shahid Khan, 260/84 (State of M.P. v. Deceased Mulayamsingh through legal representative Smt. Satyawati Wd/o Mulayamsingh), 261/84 (State of M.P. & Anr. v. Jeet Singh), 262/84 (State of M.P. v. Ramlathetsingh), 263/84 (State of M.P. & Anr. v. Jaiveersingh), 264/84 (State of M.P. & Anr. v. Babulal) and 265/84 (State of M.P. v. Lachha & Anr.).

2-3. In appeals No. 255/84, 257/84, 258/84, 259/84 and 260/84, the claimants are the legal representatives of the deceased constables, who died in the Motor Accident of Police vehicle No. MPP 2294, which was coming back from Alirajpur to Jhabua on 18-2-83, Remaining claimants are the injured persons, who received grievous and severe injuries in the said motor accident. The pleading in respect of rash and negligent driving of the vehicle are almost the same in all the claim petitions. About 30-32 constables, who were on duty, were coming back from Alirajpur to Jhabua. The police vehicle was being driven by one Rajaram Driver,

who is also a constable and an employee of the State Govt. Admittedly, by the side of the driver 4-5 persons were sitting. It is alleged by the claimants in their petitions that Rajaram was driving the vehicle rashly, in a negligent manner with a high speed, as such the vehicle did not remain in his control, in between Ranapur and Jhabua the vehicle while passing through a culvert dashed with the culvert and turned topple, as a result of which 5 constables namely Shahidkhan, Sitaramsingh, Shivpratap Singh. Krishna Murari and Mulayamsingh died and six constables namely Bhaiyalal, Jitsingh, Ramlathatsingh, Jaiveersingh, Babulal and Lachha received fractures and severe injuries. The legal representatives of the deceased constables and injured constables claimed compensation by filing applications u/s 110A of the Motor Vehicles Act before the Accident Claims Tribunal Jhabua from the State Govt. and the driver Rajaram.

In para 3 of some of the petitions clear averments were made with respect to the rash and negligent driving of the driver. In reply to the allegations of rash and negligent driving there was a general denial in the written statement by the State of M. P. and its driver. In the written statement no specific plea or case was raised either by the driver or by the State of M.P. the manner in which the accident occurred and/or of mechanical break-down or failure of brakes or of inevitable accident. In paras 3 and in 4 of the written statement of the State of M.P. in claim petition No. 30/83 it was pleaded that about 1 k.m. ahead of Ranapur there was a turn and a narrow culvert as a result of which the driver lost his control and the vehicle dashed against the culvert and thereafter toppled down. In para 4 it was alleged that the place where the accident occurred there was a narrow culvert and thereafter, because of the turn the vehicle did not remain in control and as such the accident occurred. The learned Tribunal framed Issues. No issue was raised with respect of inevitable accident in the circumstances of the case or because of sudden failure of brakes or mechanical break-down. The evidence was recorded by the Tribunal in two claim petitions i.e. in claim petition No. 20/83 (Bhaiyalal v. State of M.P.) and claim petition No. 54/83 (Deceased Mulayamsingh's LRS Smt. Satyawati & Ors. v. State of M.P.) The cases were consolidated for the purpose of recording of evidence.

On behalf of the claimants P.W. 2 Lachha and PW-4 Ramlathetsingh, who are injured persons specifically stated about the rash and negligent act of Rajaram, Driver. Ramlathetsingh (PW4) in para 1 stated that till Jobat Rajaram drove the vehicle in control but after Jobat Rajaram drove the vehicle in high speed, about 1 k.m. ahead the vehicle dashed against the culvert and the accident occurred. P.W. 2 Lachha also stated to the same effect. (Refer to statements in claim petition No. 54/83.) P.W. 6 Ramprasad in claim petition No. 20/83 stated that Rajaram was driving the vehicle in a high speed and about 1 1/2 k.m. ahead of Ranapur the vehicle turned and toppled down. There is no effective cross-examination of these witnesses, nor the State of M.P. put up the case in their cross-examination of sudden failure of brakers or of inevitable accident. The state of M.P. in rebuttal examined Rajaram driver only in Claim petition No. 20/83, who surprisingly for the first time put up a new story that he was driving

the vehicle at the speed of 30 k.m. per hour, near the place of accident there was a turn and thereafter narrow culvert was there. After culvert buffalows and cows were on the road He applied brakes but found that the brakes are not working. He tried to stop the vehicle by gear but because of number of persons were sitting by his side, he could not change the gear and could not stop the vehicle as such he lost control and the accident occurred

The learned Tribunal after appreciating the evidence on record in claim case No. 54/83 in para 5 held that because Rajaram lost control in the circumstances stated by him as a result of which the truck dashed against the culvert and truck toppled down In the opinion of Tribunal the driver was not negligent, but as the accident occurred due to the sudden failure of brakes, as such the state of MP was made liable to pay the compensation. The Tribunal fixed the multiplier of 12 years and awarded the compensation after deducting the amount of Rs. 11,500/- in cases of fatal accidents, (Rs. 4000/- of ex gratia payment and Rs. 7500/- received as family benefit fund). In cases of injuries, each injured was awarded Rs. 7500/- as compensation. The compensation as awarded to the different claimants is as under : --

Claim Case No.

M.A.No.

Award of Rs.

Deed/injured

Age

11/84

255/84

82,100/-

Deed. Krishnamurari

41 Yrs.

30/83

257/84

46,100/-

" Shivpratapsingh

35 Yrs.

27/8.1

258/84

53,300/-

" Sitaramsingh

35 Yrs.

40/84

259/84

53,300/-

" Saheedkhan

28 Yrs.

54/83

260/84

46,100A

" Mulayamsingh age in award of tribunal 30 Yrs.

22 Yrs.

20/83

256/84

7,500/-

Injured Bhaiyalal

41 Yrs.

49/83

261/84

7,500/-

" Jeetsingh

40 Yrs.

51/83

262/84

7,500/-

" Ramlathetsingh

40 Yrs.

47/83

263/84

7,500/-

" Jaiveersingh

23 Yrs.

57/83

264/84

7,500/-

" Babulal

23 Yrs.

53/84

265/84

7,500/-

" Lachha

45 Yrs.

Aggrieved, by the award passed by the learned Tribunal, the State of M.P. has preferred eleven appeals. The claimants have also filed their cross-objections and challenged the finding of the Tribunal in respect of rash and negligent driving and also claimed that the compensation awarded is low and inadequate as such it should be enhanced as claimed in their cross-objections. In fatal cases the claimants in their cross-objections stated that multiplier ought to have been fixed of 20 years and not of 12 years, the amount for consortium ought to have been awarded and the interest @ 12% from the date of their applications was awardable instead of 9%, which the Tribunal has erred in awarding the same from the date of the application. In cases of injuries, the claimants asserted that the compensation of Rs. 7,500/- for permanent disability is without any basis, No compensation for mental pain and suffering, special diet and expenses of treatment etc. has been awarded.

On behalf of appellant State, the learned Govt. Advocate Shri S. K. Kulshreshtha submitted before us that when the learned Tribunal came to a finding that the driver Rajaram was not negligent, no liability could have been fastened on the State as the State has not been made vicariously liable. It was also further argued by him that when the learned Tribunal accepted the statement of Rajaram of sudden failure of brakes as a result of which the vehicle did not remain in his control, the accident was inevitable and no liability could have been fastened on the State of M.P. for payment of compensation. In respect of compensation learned counsel Shri Kulshreshtha submitted before us that the compensation awarded is highly excessive and an amount of Rs. 30,000/- of Parivar Kalyan Yojna given to Satyawati Wd/o Mulayamsingh besides the deduction of Rs. 11,500/- ought to have been deducted. he placed reliance on the decision of the Full Bench of this Court in Smt. Kashmiran Mathur and Others

Vs. Sardar Rajendra Singh and Another, . In respect of the compensation awarded to each claimant (injured) learned counsel Shri Kulshreshtha submitted that the award is without any basis. There is no evidence of permanent disability. There is no loss of earning capacity and there are no items or details or proof for the compensation in respect of the special diet, respect of the special diet, treatment, mental pain and suffering as such award of Rs. 7,500/- to each injured person is also illegal.

On the other hand, Shri Samdani learned Counsel appearing for the claimants, submitted that the Tribunal erred in holding that the driver was not rash and negligent. The rash and negligent driving is proved by the witnesses PW-2 Lachha, PW-4 Ramlathetsingh and PW-6 Ramprasad. He submitted that the Tribunal erred in considering the afterthought story and sole testimony of driver Rajaram of sudden failure of brakes without any pleading and issue and without any further and specific and cogent evidence. There was no issue to that effect also. In any case it is a case where the principles of *res ipsa loquitur* apply and on the basis of this principle of evidence the act of the driver can be presumed to be rash and negligent and the State as such is vicariously liable for payment of compensation. Shri Samdani in respect of compensation submitted before us that the multiplier adopted by the Tribunal of 12 years is wrong. The deceased persons were in the employment as police constables and they would have retired after attaining the age of 58 years and would have received pension and other benefits and would have obtained other employment after their retirement, therefore, the period from the date of the accident till the date of retirement should be fixed as the multiplier. He placed reliance on the decision reported in 1987 Acc CJ 648 (Delhi) *Agya Kaur v. M.C.D. (Now D.T.C)* 1987 Acc CJ, 942 (Delhi) (*New India Assurance Co. Ltd. v. Angoori Devi*) 1987 Acc CJ 34 (Raj) (*Vimla v. Ramzan Khan*) and 1986 Acc CJ 23 (Raj) (*Rajasthan State Road Transport Corporation v. Pista Aggarwal*). He further submitted before us that in Claim Case No. 54/83, *Satyawati v. State of M.P.*, the State of M.P. has itself produced the evidence that Mulayamsingh was of 22 years and not of 30 years his date of birth is 5-1-61 vide Ex.D-2 and his salary was Rs. 658.90 vide Ex.D.7 while the Tribunal erred in holding that the deceased was of 30 yrs. and his salary was Rs. 525/- per month. He also submitted that the deceased persons were young persons as such at least 15000/- to each widow ought to have been awarded as an amount for loss of company and in the head of consortium and also towards pain and sufferings.

Learned counsel Shri Samdani in the cases of the claimants in respect of the injuries submitted that the learned Tribunal erred in awarding only Rs. 7,500/- looking to the nature of the injuries i.e. the fractures in ribs, left hand, right leg and left leg etc. and the period of hospitalisation. It is true that the injured persons got the treatment in the M. Y. Hospital, Indore, a Govt. Hospital, but Shri Samdani submits that amount towards special diet, purchase of medicines and the expenses incurred in attending the injured persons by their relatives and attendants in the Hospital ought to have been awarded. He placed reliance on

the cases of this Court in Sureshsingh v. Kamlesh, 1987 Acc CJ 429-wherein the amount awarded was Rs. 30,000/-. Another case Anoopsingh v. Indersingh 1987 Acc CJ 84 of this Court was also cited by him in his support.

After considering the respective arguments of the parties and the material on record, we are of the opinion that the appeals deserve to be dismissed and the cross-objections deserve to be allowed to the extent as indicated hereinafter. There is no dispute that unless the claimants prove rash and negligent act of driver, no liability can be fastened on the master, which is elementary principle in Torts for holding master vicariously liable. Hence, the Tribunal, erred in holding that though the driver was not rash and negligent but the State of M.P. as owner of the vehicle is liable to pay the compensation. But, in the present case there is no material to hold that the driver was not negligent.

After careful consideration of the pleadings of the parties and the evidence on record, we are of the opinion that the Tribunal erred in accepting the defence of the failure of brakes on the bare statement of the driver Rajaram. It is also settled that the Tribunals while deciding cases of Motor Accidents it is much bound by the pleadings of the parties as the Civil Court, though pleadings in cases of claimants are liberally construed. No amount of evidence can be looked into without the pleadings and issues. The plea of mechanical break-down sudden failure of brakes or the latent defect or of inevitable accident, is a special plea within the knowledge of the driver and the owner and it should be specifically pleaded, issue should be raised and that such plea should be proved by cogent and legal evidence that reasonable care in inspection and maintenance of the vehicle was properly taken, it was regularly checked and was checked on the ill-fated day of accident and the vehicle was found in order, but, even after exercising due attention and care the accident could not be avoided and occurred due to the latent defect of the sudden failure of the brakes.

In the present case neither the appellants raised the plea in their pleadings, nor any issue was raised, nor any evidence was led before the Tribunal of any mechanical expert and day to day maintenance of the vehicle. Not only this, the inspection report of the mechanical expert after the accident was also not produced. Hence, in our opinion, the Tribunal clearly misdirected himself in holding that the driver was not negligent and the accident occurred due to the sudden failure of the brakes. In our opinion the owner and the driver cannot escape in answer to the claim of damages, which is not found proved by us. Refer 1986 Acc CJ 533 Smt. Sushila Devi and Others Vs. Ibrahim and Another, (Sushiladevi v. Ibrahim). From the evidence it is clear that the vehicle was not in the control of the driver and at the point of

time the speed of 30 km. was an excessive speed. The speed on the highway even more than 40-50 kms. cannot be said to be excessive, but at the crowded road or at the road which is zigzag and narrow culverts are there, wherein only one vehicle can pass even on such place which may be on the highway the speed of 30 kms. will be high as the vehicle cannot be controlled in such a situation.

More so when the driver has stated in his statement that 4-5 persons were sitting by his side and there was no space even to change the gears so as to stop the vehicle. This, itself suggests that the vehicle was not in the control of the driver and the driver did not take due care and precaution to avert the accident. Hence, in our opinion the driver was clearly rash and negligent in driving the vehicle, as a result of which the accident occurred.

Even, assuming for the sake of argument that the driver was not negligent, in the present facts and circumstances of the case we can safely apply the doctrine of *res ipsa loquitur*, which is a rule of evidence departing from the normal rule that it is for the plaintiff to prove negligence but in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence. This hardship is to be avoided by applying the said 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. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. The present case is like that where the accident speaks for itself. (See *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, . When this principle is applied the burden shifts upon the defendants. From the record we are satisfied that the State and the driver have not discharged the burden by pleading and by proving that they were not negligent. In *Mangilal Vs. Parasram and Others*, the Full Bench of this Court has taken the same view and have further held that the defendant cannot escape their liability merely by preferring hypothetical explanation, however plausible, of the accident.

The Division Bench of this Court in case of *Kumari Swarnalata Kapoor and Others Vs. Jogendrapal Ramrakha Punjabi and Others*, held that the presumption of negligence is not rebutted by the mere fact that there was mechanical breakdown. Burden, was further on the defendant to prove that there was no want of care and all reasonable care of the vehicle was taken. In the case of *Smt. Sushila Devi and Others Vs. Ibrahim and Another*, the Division Bench of this Court applied the doctrine of *res ipsa loquitur* in almost similar circumstances of the case, wherein the bus while crossing the river bridge suddenly swerved to the right dashed against the railings and fell into the river. Hence we are of the opinion that the driver was rash and negligent and the State of M.P. as master, is vicariously liable to pay the compensation.

As regards compensation, first we deal with the fatal cases, in which the Tribunal has awarded the compensation after calculating the monthly dependency of each claimant on the evidence before it, to which we do not differ. But the multiplier fixed by the Tribunal of 12 years is not correct. Admittedly all the deceased persons were constables and were to retire after attaining the age of 58 years. While, awarding the compensation the Tribunal selected the multiplier of 12

years, and deducted the amount of Rs. 11500/- (the amount of Rs. 4000/- ex gratia payment and Rs. 7500/- of family welfare fund). Now-a-days, the span of life is between 65 to 70 years. The compensation should neither be punitive nor should it be a source of profit to the person in whose favour it is to be decreed. The compensation should not be a windfall because of the abrupt death nor claimant should be permitted to make a fortune out of misfortune. On the other hand, the compensation should not be low, but it should be just and proper. In case of *The State of Madhya Pradesh Vs. Smt. Davi Rawat and Others*, this Court after considering all the factors, the decisions of the Supreme Court, High Courts and English decisions selected the multiplier of 15 years. It was also considered and held in that case that the multiplier cannot be equal to the number of years of dependency or to the remainder of the working life of the deceased. Therefore, we cannot accept the argument of Shri Samdani, learned counsel for the respondents that the multiplier should have been selected as 20 years or for the remainder period of service of the deceased persons. The deceased persons, who were in 30s and/or 40s for such cases it is proper to select the multiplier of 15 years. In the cases of the deceased persons who were in twenties and were in threshold of their career we select the multiplier of 16 years as selected by this Court in the case of *Malti Vishwakarma v. Sunder Transport*, 1980 MP LJ 213 : (AIR M p 215).

Now, coming to the deductions, the Tribunal has rightly deducted ex gratia payment in each case, which is in accordance with law as laid down by the Full Bench of this Court reported in *Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another*, but we do not agree with the Tribunal and the learned counsel for the appellant State that the family pension given under *Parivar Kalyan Yojna* and *Paropkar Nidhi* should be deducted from the amount of compensation without any material. It was the burden of the defendant-State to prove and place proper material before the Tribunal and/or before this Court, about the nature and expenditure of such benefits and to show that such amount is also deductible from the compensation which having been not done, we are unable to give any allowance towards this head. See *T.R. Rangaswami and Another Vs. Thiruvalluvar Transport Corporation (Express Wing)*, Madras, and 1987 Acc CJ 7 (Gauh) (FB).

Coming to the case of injured persons, true enough that the claimants have not placed proper material by medical evidence that how much was the percentage of the disability. The State also did not place the material to that effect that whether the injured persons are working on the same posts or have been promoted or have been given increments or so and there is no disability, but the fact remains that all the injured persons are still continuing in the employment and they have not suffered in loss of earning capacity. But, it is proved that they received grievous injuries and fractures and remained under hospitalisation for quite a number of day. Without proof of vouchers, receipts and accounts it is not proper to award any amount towards special damages as in the present case all treatment was done in Government Hospital and claimants being Government

servants they might have been reimbursed. But, some amount will have to be awarded to each of the injured persons as expenses towards special diet etc. and for mental pain and sufferings. Hence, for mental pain and sufferings and towards special diet an amount of Rs. 3000/- in each case of injured persons would be proper, We could have awarded much more compensation in cases of injuries but for want of material we are unable to award more compensation except Rs. 7500/- as awarded by the Tribunal and Rs. 3000/- in the head of mental pain and sufferings and special diet which in our opinion is just compensation.

18A. The learned Tribunal has awarded the interest @ 9% per annum from the date of the application, but it is against the mandate of the Apex Court. Minimum interest in compensation cases now-a-days has to be awarded @ 12% per annum from the date of the application. See cases of *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, ; *Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others*, and also Division Bench cases of this Court reported in 1987 Acc CJ 98 and 1987 Acc CJ 429.

As regards consortium, as we are not inclined to deal with this, in this case as we have enhanced the award by increasing the multiplier and in our opinion the award in the cases of death is just and proper.

The compensation in each case would be now as under : --

(i) Claim Case No. 11/84 (M.A. No. 255/84) for the death of Krishna Murari Rs. $650 \times 12 \times 15 = \text{Rs. } 1,17,000/-$ minus Rs. 4000/- ex gratia = Rs. 1,13,000/-.

(ii) Claim Case No. 30/83 (M.A. No. 257/84) for the death of Shiv Pratap Singh Rs. $400 \times 12 \times 15 = \text{Rs. } 72,000/-$ minus Rs. 4000/- ex gratia = Rs. 68,000/-.

(iii) Claim Case No. 27/83 (M.A. No. 258/84) for the death of Sitaramsingh Rs. $450 \times 12 \times 15 = \text{Rs. } 81,000/-$ minus Rs. 4000/- ex gratia = Rs. 77,000/-.

(iv) Claim Case No. 40/83 (M.A. No. 259/84) for the death of Shahid Khan Rs. $450 \times 12 \times 16 = \text{Rs. } 86,400/-$ minus Rs. 4000/- ex gratia = Rs. 82,400/-.

(v) Claim Case No. 54/84/(M.A. No. 260/84) for the death of Mulayamsingh Rs. $400 \times 12 \times 16 = \text{Rs. } 76,800/-$ minus Rs. 4000/- ex gratia = Rs. 72,800/-.

(vi) Claim Case No. 20/83 (M.A. No. 256/84) for the injuries to Bhaiyalal Rs. $7500 + 3000 = \text{Rs. } 10,500/-$.

(vii) Claim Case No. 49/83 (M.A. No. 262/84) for the injuries to Jeetsingh Rs. $7500 + 3000 = \text{Rs. } 10,500/-$.

(viii) Claim Case No. 51/83 (M.A. No. 261/84) for the injuries to Ramlathetsingh Rs. $7500 + 3000 = \text{Rs. } 10,500/-$.

(ix) Claim Case No. 47/83 (M.A. No. 263/84) for the injuries to Jaiveersingh Rs. $7500 + 3000 = \text{Rs. } 10,500/-$.

(x) Claim Case No. 57/83 (M.A. No. 264/84) for the injuries to Babulal Rs. 7500 + 3000 = Rs. 10,500/-.

(xi) Claim Case No. 53/83 (M.A. No. 265/84) for the injuries to Laccha Rs. 7500 + 3000 = Rs. 10,500/-.

The claimants/respondents are entitled to the compensation as stated in para 20 besides interest at the rate of 12% per annum from the date of the application till payment. The appellant/State is entitled to adjustment of amount of compensation and amount of interest, if already paid or deposited as per the award of the Tribunal. Thus, the appeals filed by the State are dismissed and the Cross-objections filed by the claimants/respondents are allowed as indicated above with costs. Counsel's fee Rs. 500/- in each case, if already certified.