
(1975) 01 OHC CK 0026
In the Orissa High Court
Case No : M.A. No. 97 of 1971

State of Orissa

APPELLANT

Vs

Archana Naik and Others

RESPONDENT

Date of Decision : 20-01-1975

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1975) ACJ 116

Hon'ble Judges : S.K. Ray, J

Bench : Single Bench

Advocate : Advocate General and Addl. Standing, for the Appellant; S.C. Routray and P. Ray, for the Respondent

Final Decision : Allowed

Judgement

S.K. Ray, J.—This appeal is by the State of Orissa and is directed against the order dated 14. 5. 71 of the Motor Accidents Claims Tribunal, Puri (hereinafter referred to as the "Tribunal") granting compensation to the tune of Rs. 70,000/- to Respondent No. 1, widow of deceased Surendra Kumar Naik, and his child who is Respondent No. 2, in a claim case filed u/s 110 A of the Motor Vehicles Act. The Tribunal apportioned this liability amongst the Appellant, the Insurance Company (Respondent No. 3) and the owner of the truck involved in the accident (Respondent No. 4) by which the Appellant, Respondents Nos. 3 and 4 were directed to pay an amount of Rs. 35,000/-Rs. 16,000/- and Rs. 19,000/- respectively.

2. The claimants, as already stated, are the widow and the child of the deceased Surendra Kumar Naik, an O.A.S. Class II Officer who was serving the Appellant on the date of accident. Their case is that on 12. 6. 69 at about 8 a. m. he came to Cuttack from Bhubaneswar on official duty in station wagon registered as O R.C. 3442 along with one J. B. Singh, Joint Director of Industries (P. W. 2). He was returning to Bhubaneswar in the station wagon in the afternoon of that day.

At about 2 p. m. while the station wagon was at a short distance away from the Vani Vihar Crossing, a truck bearing No. O R.U. 1053 belonging to Respondent No. 4 came from Khandagiri side along the National High way with high speed and collided head-on with the station wagon. As a result of this collision three persons died, namely, Surendra Kumar Naik, husband of Respondent No. 1, mother-in-law of the Joint Director Jiban Ballav Singh and the driver of the station wagon. The mother-in-law of P.W. 2 died on the spot, Surendra Kumar Naik died on his way to the hospital and the driver died in the hospital. P.W. 2 himself was badly injured and became unconscious. He regained consciousness only after 48 hours of the accident. P.W. 4, Sub-Inspector of Police, then attached to Capital Police Station, Bhubaneswar arrived at the spot within an hour of the accident. He prepared the spot map (Ex. 1), seized the two vehicles, measured the skid mark of the truck as well as of the station wagon. The Motor Vehicles Inspector also examined the vehicles involved in the accident and submitted his report. P.W. 3, on the requisition of P.W. 4, took photograph of the two vehicles at the spot. Ex. 7 is the negative of the photograph and Ex. 8 is a photo print of one of the negatives.

3. According to the claimants, the deceased Surendra Kumar Naik had been serving in Khadi Board on deputation and was drawing a monthly salary of Rs. 715/- out of which the claimants were getting a pecuniary benefit of Rs. 600/- per month. The said deceased was about 34 years old at the time of accident and according to the rule of retirement then prevailing he had a further period of 24 years of service in the minimum. Evidence has been led that this officer was a very competent one and earned appreciations from his higher authorities for discharge of his duties and, therefore, the claimants assert that in normal course of service he could have got into the I.A.S. cadre. On these grounds the claimants claimed a compensation of Rs. 21 lakhs.

4. The specific case of the claimants in their claim petition was that both the vehicles were negligent and basing their case on the theory of composite negligence the claimants asserted that the Appellant, owner of the station wagon, and Respondent No. 4, owner of the truck, were jointly and severally liable for the total amount of compensation claimed.

5. The Appellant in its written statement contended inter alia, that there was no rash or negligent driving on the part of the driver of the station wagon and that the accident was the direct result of rash and negligent driving of the driver of the truck, and accordingly, prayed that it may be excused of all liability. As regards quantum of compensation its case was that the deceased Surendra Kumar Naik was drawing a sum of Rs. 613.60 as monthly salary and the quantum of compensation claimed was imaginary and excessive.

6. The insurance company and the owner of the truck contended that the accident was due to the sole negligence and rashness of the driver of the station wagon and there was no negligence on the part of the truck driver. On these grounds they denied their liability.

7. The learned Tribunal held that both the vehicles were being driven in rash and negligent manner which resulted in the accident, and, accordingly, it held the Appellant as well as the Respondent No. 4 and the insurer of the truck Respondent No. 3, as joint liable and apportioned the compensation amount awarded by it amongst them in the proportions already stated above. As to the quantum of compensation his reasoning was that the deceased would have ordinarily lived upto the age of 60 years and the claimants would have received monetary benefit from him for about 25 years from the date of accident. Accordingly, he came to the conclusion that the claimants would have enjoyed the pecuniary benefit of Rs. 250/- per month (Rs. 200/- by the wife and Rs. 50\ by the baby) if the deceased Surendra Kumar Naik had survived and had lived a normal span of life.

8. The general rule is that for fixing the liability it is essential for the claimant to prove that the accident was caused by the negligence of the driver which is of prima consideration in ascertaining the liability of a person in an accident. The first task of a Tribunal, therefore, should be to ascertain with reference to evidence on record as to which of the drivers or both the drivers were rash or negligent. In such a case the burden of proof of the alleged negligence or rashness is in the first instance on the Plaintiff. There is, however, an exception to this general rule which arises wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the Defendant's negligence or where the event charged as negligence tells its own story of negligence on the part of the Defendant, the story so told being clear and unambiguous. The Plaintiff cannot rely upon an inference of negligence unless he has alleged in the pleadings and proved at the trial the facts from which the inference is to be drawn. To these cases the maxim *res ipsa loquitur* applies (Halsbury's Laws of England, Third Edition, Volume 28 at page 77) This dictum was followed by the Supreme Court in the case of *Municipal Corporation of Delhi v. Subhagwanti and Ors.* 1966 Al. N. 57 To invoke this doctrine, the necessary facts to uphold it must be alleged in the pleadings and proved at the trial. Where drivers of two vehicles collided are found negligent in such cases instead of apportioning the liability of compensation between them they should be held jointly and severally liable for the whole loss and the claimants can recover the compensation from either or both of them. Mr. Routray the learned Counsel for the claimants, contended very strongly for application of this doctrine. His this contention was based upon the finding of the trial court under issue No. 3 that both the vehicles were being driven in rash and negligent manner which resulted in the fatal accident. In reaching such a finding the Tribunal does not appear to have taken into account the evidence of P.W. 4 nor to have given due weight to the evidence of P.W. 2. According to P.W. 4 his investigation revealed that the accident was due to the negligence and carelessness of the truck and he has already submitted a charge sheet under Sections 279 and 304A I.P.C. against the driver of the truck. He further deposes that the left side of the front portion of the truck was found

entangled with the station wagon and the accident took place after the truck passed the station wagon. The last statement of his is an opinion based upon various physical facts which he found on spot investigation, and which he probably learnt from the report of the M.V.I. P.W. 2 is an eyewitness to the accident. But how far his evidence with regard to the speed of the station wagon, its position on the road, its distance from Vani Vihar Crossing immediately before the collision occurred would be reliable will depend upon how much of his evidence is consistent with the physical facts found on the spot, viz, the skid marks, any mark of the dragging of the station wagon as a result of the collision and the findings of the M.V.I. P.W. 4 has, however, said that he found the station wagon free from mechanical defects. But he is not an expert. The M.V.I.'s report should have been put in evidence.

That apart, I find that a lot of clarify questions should have been asked to P.W. 4 with reference to his sketch map (Ex. 10). His map prima facie appears to me to be not correct in one respect, namely, the direction given in the spot map. I have seen Rasulgarh which does not lie to the north of Vani Vihar Crossing. I also find from the map a dotted line from the circle "S" up the circle indicated as spot. There is nothing on record to explain what it indicates. P.W. 4 should have been asked to clarify all the details of the map. The Motor Vehicle Inspector who obviously went to the spot and examined the vehicle and sub omitted his report is another important witness in the case. He could have given the details of the various damages to the various parts of the station wagon and to the truck which would have furnished valuable clue as to how actually the accident occurred. Had the M.V.I, been examined and his report put in evidence and had P. W. 4 been cross-examined thoroughly with regard to his spot map (Ex. 10) suthcint materials might have been forth coming to make it possible to apply the doctrine of "res ipsa loquitur" in the present case and also to evaluate oral evidence led in the case. In my opinion, this is a fit case which ought to go back to the Tribunal and an opportunity be given to the parties concerned to examine the M.V.L. and to put his report in evidence and to recall P.W. 4 for further cross-examination with reference to Ext. 10.

It appears from the evidence of P. W. 4 that there are other eye-witnesses to the occurrence and I presume that their names would be found from the case diary of the criminal case which he has instituted under Sections 279 and 304-A I.P.C. This is a proper case where parties concerned also should be given an opportunity, if they so choose to take it to examine any of those eye-witnesses who should be able to throw more light on the whole affair, provided they are available.

9. Two other points also were argued at the Bar, one regarding the enhancement of the quantum of compensation for which there is a cross appeal filed by the claimants and the others whether the widow of the deceased Surendra Kumar Naik having remarried during the pendency of this appeal in this Court would be entitled to any compensation which would ultimately be awarded in her favour

jointly with her baby or the whole compensation should go to the baby or whether on account of her remarriage the assessment to the quantum has to be reduced. It is clear from the decided cases that in assessing the quantum of compensation the pecuniary loss can be ascertained by balancing on the one hand the loss to the claimants of the future pecuniary benefits and on the other pecuniary benefits advantage which, from whatever sources, come to them by reason of the death and all circumstances should be considered which may legitimately be pleaded in diminution of the damage viz. deceased man's expectation of life and the possibility of his premature termination of his life by later accidents, benefits accruing to the widow from acceleration of her interest in his estate, possibility of the wife dying earlier, possibility of the widow remarrying and thus ceasing to be a dependent. See the case of *Gobald Motor Service v. Veluswami* A.1.R. 1962 S.C. 1; *Nance v. British Columbia Electric Railway Company Ltd.* 1951 A.C. 601; *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, The main idea of awarding compensation should be to reasonably compensate the dependents for the loss of that part of the income which the deceased might have made available to them if he had lived out his normal span of life. The uncertainties of the future introduce an element of discount in the formula that has to be evolved for working out this compensation amount. While granting compensation, the court should not allow a misfortune, to be turned into a windfall {see the case of *Shanti Devi Vs. General Manager, Punjab Roadways and Others*, Apart from the remarriage of the widow, a factor requiring consideration in reassessment of the quantum, it appears to me that all the above principles which have been evolved by decided cases to be taken into consideration in assessment of the quantum have not been kept in mind by the Tribunal.

10. For the aforesaid reasons I would set aside the order of the Tribunal and remand the case back to him for fresh disposal in accordance with law. He shall give an opportunity to the parties concerned, specially the claimants, if they so desire, to prove the report of the M.V.I, and to examine him and to recall P. W. 4 for clarification of various aspects of his spot map (Ex. 10) and to examine such other eye-witnesses who according to P.W. 4 were present at the time of collision, if they so desire, and thereafter reconsider both factual and legal aspects of the case and dispose it of in accordance with law. In view of this order of remand both the appeal and the cross appeal are bound to succeed.

11. In the result, both the appeal and the cross appeal are allowed and the case is remitted back to the Tribunal for fresh disposal in accordance with law having in mind the observations made above. In the circumstances, there will be no order for costs.