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**(1976) 07 OHC CK 0002**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 144 of 1974**

State of Orissa

APPELLANT

Vs

Gaya Janardan Behera and Others

RESPONDENT

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**Date of Decision :** 05-07-1976

**Acts Referred:**

**Citation :** (1977) ACJ 459

**Hon'ble Judges :** S. Acharya, J

**Bench :** Single Bench

**Advocate :** P.C. Kar, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Acharya, J.—The State of Orissa has preferred this appeal against the judgment passed by the Second Motor Accidents Claims Tribunal, Puri in Misc. Case No. 76/73 (142/72)

2. At about 10 a.m. on 7.11.72 the bus ORU 2050, belonging to the State Transport Service, Cuttack Zone, dashed against the deceased boy near Kalpana Cinema at Bhubaneswar as a result of which the boy died at the spot. The father mother and the two minor sisters of the deceased preferred the claim for compensation on the allegation that the said accident was caused due to the rash and negligent driving of the said bus as a result of which the deceased died at the spot. On behalf of the claimants three witnesses, including the father of the deceased, were examined, and on behalf of the Appellant only the driver and the cleaner of the bus were examined. The court on a lengthy discussion and consideration of the evidence and materials on record arrived at the finding that the accident was entirely due to the rash and negligent driving of the said bus as a result of which the deceased died at the spot. On behalf of the claimants three witnesses, including the father of the deceased, were examined, and one on behalf of the Appellant only the driver and the cleaner of the bus were examined. The Court on a lengthy discussion and consideration of the evidence and

materials on record arrived at the finding that the accident was entirely due to the rash and negligent driving of the vehicle and the boy was not in any way responsible for the said accident. The Court below has found that the deceased boy was aged about 10 years and was the only son of his parents. Basing its finding on the life expectancy of the parents of the deceased at 70 years and calculating the minimum contribution for 20 years which the deceased would have made, had he survived, towards his parents till their last day at the rate of Rs. 1.50 per day, it estimated the compensation on this account at Rs. 16,200/-. On that it granted Rs. 2,000/- as solatium to relieve the mental shock and distress of the claimants due to the death of the deceased. From the total compensation amount of Rs. 18,200/- thus assessed it directed deduction of 15 per cent therefrom on account of lump sum payment and uncertainties of life, and ultimately ordered payment of a sum of Rs. 15,470/- with interest at the rate of 6 percent per annum from the date of application till the payment of the said amount to the claimants. He has also directed payment of Rs. 400/- to the claimants on account of their cost in this claim case.

3. It is urged by Mr. Mohanty, the learned Standing Counsel for the Appellant, that the finding of the Court below that the accident took place entirely due to the rash and negligent driving of the bus is against the weight of the evidence on record. I have thoroughly perused the evidence on record alongwith the counsel appearing for both the parties. It is admitted by the driver of the bus (O.P.W. 1) that the place where the accident took place was near the bus stand and there was a busy market just in front of that place. According to the driver and the cleaner (O.P.W. 2) the deceased boy suddenly rushed from the right side of the bus near a banian tree and while trying to cross the road just in front of the bus he dashed against the bus on its left side and so the driver was not in any way responsible for the said accident. The driver has admitted in his cross-examination that he saw the boy when he was at a distance of 5 cubits in front of the vehicle and that the boy covered a distance of 20 to 25 feet by running before he dashed against the vehicle. He has further stated that he was driving the vehicle leaving 15 feet of the road on the right side, besides the said 15 feet there was 2 or 3 feet of Kutcha road on the right side, the banian tree on the right side of the road near the place of accident was at a distance of about 18 feet from the vehicle; and that when he was driving the vehicle he could see both the sides of the road. His evidence that the boy came out from underneath the banian tree and wanted to cross the road in front of the bus indicates that he must have seen the boy coming out from underneath the banian tree. His above evidence read alongwith his further statement that he saw the boy at a distance of 5 cubits in front of the vehicle and the boy covered a distance of 20 to 25 feet by running before he dashed against the bus clearly indicates that the movement of the boy was marked by the driver for sometime before the accident took place. So even on the evidence of the driver of the bus a case of sudden appearance of the boy in front of the bus is not made out. If the driver of the bus could see the boy from the time he came out from underneath the banian tree

and if the driver saw the boy running in front of the bus as stated above then he could have stopped the bus before the bus came in contact with the boy if really the vehicle was moving at the slow speed of 15 to 20 Kms. per hour, can be stopped at the spot where brakes are applied suddenly. If that is so, if really the driver was driving the bus at a speed of 15 Kms. per hour then he could have easily stopped the bus when he saw the boy coming out from underneath the banian tree and running in front of the bus at a distance of 5 cubits from the bus. On the above considerations I am convinced that the driver was not driving the bus at a reasonably low speed in that busy locality and he did not act with care, caution and watchfulness expected of a driver driving a motor vehicle through a busy thoroughfare and so the accident took place. Thus the driver of the bus and hence its owner the Appellant, cannot be absolved of the responsibility of and the liability accruing from the said accident.

4. While holding the driver responsible for rash and negligent driving of the bus, I am, on the evidence on record, inclined to hold that the deceased boy was also guilty of contributory negligence in this case. The deceased was a boy of more than 10 years old and he certainly was alive of the danger of crossing the road right in front of a running bus. The claimants ease, that the deceased was walking on his extreme right side of the road on its clay portion and the bus coming from his back side suddenly swerved towards its right and dashed against the boy and killed him in that process, cannot at all be believed in view of the admission of P.W. 3 (one of the claimant's witness) that the accident took place in the middle of the road and the vehicle was on its left side of the road on the pitch portion at the time of accident. On the above admission of P.W. 3 and the case put forward and admissions made by the driver as stated above it becomes evident that the boy some how came in front of the bus and while he was moving in front of it at a short distance away from the bus it dashed against him as the driver did not act with care, caution and watchfulness, and so the accident took place. As the boy acted in a negligent manner in coming in front of the bus while it was moving in that busy locality, he too was responsible to some extent for the said accident. Therefore he has to be held guilty for contributory negligence.

5. Therefore though the finding of the Court below that the accident took place entirely and solely due to the rash and negligent driving of the vehicle cannot be upheld, on the evidence on record it has to be held that the driver of the bus was guilty of rash and negligent driving of the bus and the boy too, to some extent, was also guilty of contributory negligence and so the accident took place.

6. It is well settled that no compensation can be granted by way of solatium to relieve mental shock, and suffering and distress of the claimants in a case of this nature. Therefore the court's decision awarding compensation of Rs. 2,000/- as solatium on that account be sustained. Accordingly the order for payment of Rs. 2,000/- on that account is set aside.

7. The court below has assessed Rs. 16,200/- as compensation due to the

pecuniary loss sustained by the claimants on account of the death of the deceased in the said accident. This amount has been, arrived at on the basis of the court's assessment of the amount of expected contribution which the deceased could have made towards his parents for 30 years had he not been killed in the said accident. Assessment on this account has been made at the rate of Rs. 1.50 per day. The deceased was the only son of his parents and he was rendering help and assistance to his parents in their business of selling fish in the Bhubaneswar market. When the deceased would have come up in age he would have rendered valuable assistance and help towards his parents in various ways, the monetary value of which would have been much more than Rs. 1.50 per day. The claimants have not preferred any cross-appeal against the aforesaid finding of the Court below and so it is not for me to increase the compensation assessed by the Court below on this account. Accordingly the compensation fixed by the Court below on the above account is confirmed at Rs. 16,200/- On my finding that the deceased boy was also guilty of contributory negligence to some extent, some amount has to be deducted from the aforesaid compensation of-Rs 16,200/- and so Rs. 3,000/- is to be deducted on that account. Thus the compensation amount comes to Rs. 13,200/-. 15 per cent out of the said amount is to be deducted on account of lump sum payment and uncertainties of life. So the set compensation amount which the Appellant has to pay to the parents of the deceased is Rs. 11,200/- The said amount has- to be paid with interest at the rate of 6 per cent per annum from the date of the application (15.11.72) till the date of the payment of the said amount. The Appellant has also to pay to the claimants Rs. 400/- towards the consolidated cost of the claim case as assessed by the court below. The Appellant shall pay the said amounts directly to Respondents 1 and 2, the parents of the deceased, in presence of two respectable persons, oh obtaining proper receipt from them (the payee).

In the result, therefore, the appeal succeeds to the limited extent stated above. There shall be no order as to costs of this appeal.