
(1976) 12 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 143 of 1974

Subhadra Bai

APPELLANT

Vs

M.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 13-12-1976

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1977) ACJ 69

Hon'ble Judges : G.G.Sohani, J;B.R. Dubey, J

Bench : Division Bench

Advocate : H. Rajpal, for the Appellant; J.D. Patel, for the Respondent

Final Decision : Allowed

Judgement

B.R. Dube, J.—This is an appeal against the decision of the Motor Accidents Claims Tribunal, Indore, dated 18-4-74 in Claim Case No. 112 of 1971, whereby the application of the claimant-Appellant, u/s 110A of the Motor Vehicles Act, 1939 for compensation in respect of a fatal accident was dismissed.

2. The Appellant is the widow of Chandulal, who died in the motor accident on 5-9-71. On the date of the accident the deceased was coming from Holkar College side, while driving rickshaw No. M.P. 9563, at about 6 a.m. The Respondent No. 2 Motilal was a driver on bus No. MPC 7714 belonging to Respondent No. 1, the M.P. State Road Transport Corporation and was going from Indore to Mhow. A collision took place between these two vehicles, which were moving in opposite directions, just near Navlakha bridge, with the result that deceased Chandulal sustained serious injuries on account of which he died in the hospital on the very day.

3. The Appellant and Respondent No. 3 Champalal, the brother of the deceased had made a claim for compensation amounting to Rs. 100000/- on the allegations that the accident took place on account of rash and negligent act of Respondent No. 2 in driving the bus. It was averred that the deceased, a young

man of 22 years of age, was earning Rs. 300/- per month. The claimants took the span of life of the deceased as 60 years and on that basis claimed the compensation.

4. The claim was contested by the Respondents Nos. 1 and 2. They denied that the accident took place on account of any rash and negligent act of Respondent No. 2 in driving the bus. It was urged that Respondent No. 2 was driving the bus at a moderate speed and very cautiously but it was the deceased, who came from the opposite direction driving his rickshaw very fast. It was further averred that Respondent No. "2, seeing the rickshaw coming at a fast speed, stopped his bus but the deceased could not control the rickshaw and dashed against the bus and as such he was himself responsible for the accident. The Respondents 1 and 2 also denied the quantum of damages as claimed by the claimants.

5. The learned Member of the Claims Tribunal held that it was not proved that the Respondent was driving the bus rashly or negligently. He, however, assessed the compensation at Rs. 10.000/-. In view of the finding that the claimants were not entitled to get any compensation, the application was dismissed. The Appellant has, therefore, come to this Court in appeal.

6. The first question for consideration is whether the accident was caused on account of rash or negligent act of Respondent No. 2 in driving the bus. Two witnesses Narayan Singh (AW-2) and Shankar (AW-4) have claimed to be the eye-witnesses of the said accident. They are residents of Parsi Mohalla which is quite close to the place of accident. These witnesses have said that at the time of the said accident they were undertaking their morning race. The accident took place at about 6 a.m. At that time people generally go for morning walk. It was, therefore, quite natural for these two witnesses to have deposed that the bus was going in high speed and it dashed against the rickshaw on the wrong side. They have also stated that after the collision the rickshaw was dragged by the bus up to some distance. The witness Narayan Singh (AW-2) has also stated that on account of the impact, the rickshaw had turned round and then it was dragged upto two or three paces. Both these witnesses have categorically denied that at the time of the accident the bus was in a standstill position and the rickshaw had dashed against it. Both the witnesses have also deposed that the rickshaw driver was driving the rickshaw on his side. There are no valid grounds to disbelieve the testimony of these witnesses.

7. It may be noted that the testimony of the above named witnesses gets corroboration in material particulars even by Rameshwar (N.A. W-2), who was examined on behalf of the Respondents Nos. 1 and 2. This witness was on that day travelling in that bus and was occupying his seat just on the side of the driver. This witness has stated that both the bus and the rickshaw were moving in opposite directions and both of them were on their respective sides. According to this witness the bus was going at the speed of 35 to 40, although he could not distinguish whether the said speed was in kilometres or in miles. This witness has stated that on the left sides of both the vehicles there were ditches and the

bus driver tried to save the rickshaw, but the bus dashed against the rickshaw. This witness has also stated that after the collision the rickshaw was turned around and it was dragged for a distance of about 10 to 12 paces. From the evidence of this witness it is clear that the bus was in a pretty high speed and the accident took place because the bus driver could not control it. When there was a ditch on the left side of the bus, it was quite probable that in order to avoid that, the Respondent No. 2 swerved the bus towards his right hand side and in doing that dashed against the rickshaw.

8. The witness Rameshwar (N.A. W.-2) has falsified the defence case that the bus driver had stopped the bus and after that the rickshaw dashed against it. The Appellant's witnesses and the witness Rameshwar (N.A.-W.-2) have said that the accident took place after Navlakha bridge was crossed by the bus. The witness Rameshwar had said that while crossing the bridge the speed of the bus had become low but no sooner the bridge was crossed the driver raised the speed. According to the said witness the accident took place just at a distance of about 20 paces from the bridge. It has also come in the evidence of this witness that after the impact the bus stopped at a distance of about 15 to 20 feet. This also indicates that the bus was in high speed and hence dead-stop just at the place of accident was not possible. When the Respondent No. 2 was crossing the bridge he ought to have seen the rickshaw coming from the opposite direction and as such, just after crossing the bridge the act of the said Respondent in speeding up the bus was nothing but rash or negligent.

9. It is contended by the learned Counsel for the Respondents Nos. 1 and 2 that deceased Chandulal was not an experienced rickshaw driver, that he was on that date learning the driving of the rickshaw and that he was driving the rickshaw in a zig-zag way with the result that he negligently dashed his rickshaw against the bus. On perusal of the record of the Claims Tribunal, we do not find any material to support the said contention. We are therefore, clearly of the view that the Appellant is entitled to claim compensation from the Respondents Nos. 1 and 2 on account of the death of her husband in the accident which was caused due to rash or negligent driving of the bus by the Respondent No. 2.

10. Now, the next question for consideration would be what amount of compensation should be awarded to the Appellant. The learned Member Claims Tribunal has assessed the compensation at the sum of Rs. 10,000/-. In our opinion, this is not adequate. The deceased was, according to the Appellant, a youth of 22 years of age. The Respondents Nos. 1 and 2 in their written statement have stated that the deceased was 24 years of age. Even accepting the age of the deceased to be of 24 years, the life expectancy can be taken to be of 60 years. The Appellant has stated that her husband used to earn Rs. 10/- per day in rickshaw drivig. It is true that there was possibility of come fluctuation in his daily earising. However, looking at the present day position, a rickshaw driver could have earned anything between Rs. 200/- to Rs. 300/- per month.- Looking at the nature of the work of a rickshaw driver it may be said that he must have

been spending more for himself. Nevertheless it can be reasonably believed that the deceased might have, been spending Rs. 75/- per month for the maintenance of the Appellant. The Appellant does not seem to be an educated woman and there is nothing on record to suggest that she can get any other employment for her livelihood. In view of the life expectancy of the deceased, he could have contributed at least Rs. 75/- per month to the Appellant for a period of 36 years. On calculation, the pecuniary loss to the Appellant comes to Rs. 32,400/-.

11. However, in capitalising the lump sum compensation certain deduction has to be made in the said sum. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, their Lordship of the Supreme Court have restated the principles laid down by Viscount Simon in Nance v. British Columbia Electric Hallway Company Ltd. (1951) A.C. 601 as under:

...at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents, secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime, and other circumstances, thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death, fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate, and fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life, it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position.

Keeping in view the above principles, we are of the view that the facts and circumstances of the instant case would justify an award of lump sum compensation at a sum of Rs. 15,000/- to the Appellant.

12. For the above reasons this appeal is partly allowed. The decision and award of the Claims Tribunal are set aside and a sum of Rs. 15,000/- is hereby awarded to the Appellant with proportionate cost. The claim in appeal for the rest of the amount is, however, dismissed with cost. The Respondents Nos. 1 and 2 shall be jointly and severally liable to pay the said amount to the Appellant. Counsel's fee be taxed as per schedule, if certified.