
(1997) 08 MP CK 0062
In the Madhya Pradesh High Court
Case No : M.A. No. 522 of 1995

Taj Singh @ Tejpal Singh

APPELLANT

Vs

M.P. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (2000) ACJ 214 : (1998) 1 MPLJ 574

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : A.L. Patel, for the Appellant; A.G. Dhande and Yogesh Dhande, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (Act) against the award dated 30-3-1995 passed in M.V. Case No. 11/92 by Vth Additional Motor Accidents Claims Tribunal, Sagar.

Facts giving rise to this appeal are thus : The appellant was travelling as a passenger in stage carriage bus No. MPK-9935 on 17-4-1983, owned by respondent Corporation which was going from Sagar to Bhopal. At about 8.50 a.m. near village Ratona, it collided with the road side tree, as a result of which, the driver of the bus Devkaran died at the spot, and the appellant received severe injuries. Appellant was taken to Sagar Hospital. From there he was advised to take treatment at Indore and then at Ahmedabad for central fracture dislocation of left hip joint with disruption of sacro-iliac jt. with infracture fracture in head of femur. He also suffered, a fracture in the ilio-ischial ramus with two steinmann pins in innominate and subtrochanteric area, crossing outside the soft tissues. AW-1 Dr. Pravin Kanabar of Orthopedics Hospital, Ahmedabad performed the operation and treated the appellant where steel rod was affixed. He remained

under plaster and treatment from 17-4-1983 to 15-7-1983. As a result of injuries the appellant suffered shortening of left leg by 1" and permanent disability of 35%.

The appellant claimed compensation of Rs. 2 lacs. The respondent Corporation contested the claim by taking a plea of inevitable accident due to act of God. The Tribunal after appreciation of evidence on record dismissed the claim holding that the accident was inevitable due to act of God.

It is well settled that in motor accident cases when plea of inevitable accident is raised the burden lies on the party who raises the plea. In other words, the person defending the claim has to show that his conduct was utterly without fault i.e. without negligence. In the legal sense the act of God (*vis major*) may be defined as an extraordinary occurrence or circumstance which could not have been foreseen and could not have been guarded against, or more accurately as an accident due to natural causes, directly and exclusively without human intervention. It is a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Some of the well-known circumstances of acts of God are : a violent storm at sea, an extraordinarily high tide, an unprecedented rainfall, an extraordinary flood, an earthquake, fire caused by lightning, an extraordinary frost, an extraordinary snowfall and like. They are in a sense inevitable accidents beyond the control of man. *Vis major*, must be the proximate cause, the *causa causans* and not merely a *causa sine qua non* of the damage complained of. The mere fact that *vis major* co-existed with or followed on the negligence is no adequate defence. Before an act of God may be admitted as an excuse, the party taking the plea must have done all that he is bound to do. See - Halsbury's Laws of England Vol. 9, Fourth Edition, page 323, para 458 and Ratanlal & Dhirajlal's "The Law of Torts", 23rd Edition by Justice G. P. Singh, page 443, 444.

Accidents may happen by reason of the play of natural forces or by intervention of human agency or by both. It may be that in either of these cases accidents may be inevitable. But it is only those acts which can be traced to natural forces and which have nothing to do with the intervention of human agency that could be said to be acts of God. If the act in its origin either in the whole or in part is due to in the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case of act of God.

The law is well settled that every mechanical defect or failure which cause or results in an accident cannot be attributed to an "act of God" or be termed as "inevitable accident". In order to succeed in a defence that the accident was due to a mechanical defect, the owners have to prove that they had taken all necessary precautions and kept the vehicle in a road-worthy condition and that the defect occurred in spite of the reasonable care and caution taken by the owner of the vehicle. In order to sustain a plea that the accident was due to the

mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. If it is established that in spite of reasonable care, the defect remained hidden the owner would not be liable. See - Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, .

In the written statement in para 7 the respondent have taken a defence of mechanical breakdown, as suddenly steering wheel got free, as a result of this the bus did not remain in control and struck with the road side tree. Therefore, it was contended that the accident was inevitable. To establish the plea of latent mechanical defect, the respondent has examined NAW-1 Purshottam, the conductor of the bus and NAW-2 Robert Clamers. NAW-1 stated that at the time of accident the bus was going in normal speed, it suddenly did not remain in control, went astray and struck with the tree. NAW-2 is the motor mechanic of the Corporation, who merely stated that on 17-4-1983 before the vehicle left, he checked the vehicle and did not find any mechanical defect. Bus was in order. The witness did not state that he checked steering of the Bus, or the brakes. No evidence was also led that after the accident the vehicle was got examined by technical expert, who found that because of the steering wheel of the bus got free due to breakage of any part or defect which was latent. In the circumstances, the respondent has failed to establish that the accident was inevitable due to mechanical breakdown. Therefore, neither the defence of act of God is available nor in the circumstances of the case the defence of inevitable accident has been established. On the other hand the doctrine of *res ipsa loquitur* is clearly attracted in the case. Therefore, we hold that the accident was caused due to negligence of the respondent and its driver who also lost his life in the accident.

Re : compensation : In personal injury actions the damages are to be awarded in two heads; pecuniary and non-pecuniary. Pecuniary damages are the expenses which the victim has actually incurred and which is capable of being calculated in terms of money whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. So far non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. See - R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, . In pecuniary damages the appellant has spent about Rs. 30,000, which he has proved by oral and documentary evidence and by the statement of AW-1 Dr. Kanabar. Hence, the appellant is entitled to an amount of Rs. 30,000 under the head of medical attendance and care. Under the head of non-pecuniary damages the appellant is entitled to Rs. 10,000 for pain and sufferings and for permanent disability of 35% due to shortening of leg, taking into account the comparable cases and the

fact that the appellant had to suffer the disability life long, the appellant is entitled to Rs. 40,000. Thus, the appellant would be entitled to Rs. 80,000.

At this stage, counsel for the respondents submits that the respondents be not burdened with interest as there was no fault of the respondents. The case remained pending since 1983 to 1995. It was because of the delay on the part of the appellant in adducing the evidence. In the circumstances and having gone through the proceedings of the case, we are satisfied that the submission made by the respondent's counsel deserves consideration. Therefore, we direct that the appellant would be entitled to Rs. 80,000 with interest thereon at the rate of 12% per annum for a period of 7 years only. The respondent Corporation is directed to deposit the amount within two months from the date of supply of certified copy, failing which the amount shall carry interest at the rate of 15% per annum.

In the result, the appeal is allowed with costs. The award of the Tribunal is set aside and is substituted as indicated hereinabove. Counsel's fee Rs. 1000, if pre-certified.

C.C. as per rules.