
(1975) 03 OHC CK 0009
In the Orissa High Court
Case No : Misc. Appeal No. 5 of 1972

Tara Dibya and Another

APPELLANT

Vs

The General Manager, Orissa Road Transport Co. Ltd.

RESPONDENT

Date of Decision : 14-03-1975

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1976) ACJ 178

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : S.C. Rautary, for the Appellant; Y.S.N. Murty, for the Respondent

Judgement

S. Acharya, J.—This is an appeal by the Petitioner u/s 110-A of the Motor Vehicles Act against the compensation awarded by the Motor Accident Claims Tribunal, Puri, in Miscellaneous Case No. 11 of 1970. The mother of the deceased made the claim on behalf of herself and as guardian of her minor second son.

2. The claimant's case in short is that at about 9.30 a.m. on 18.12.69 near about village Hanspal the deceased was going on a bicycle on the Cuttack-Bhubaneswar road towards Cuttack. While the deceased was crossing a bridge on the main road, O.R.T. Bus No. ORG 1970 (hereinafter referred to as the "Bus") came from behind in a rash and negligent manner at a high speed and dashed against the deceased and dragged him to a considerable distance as a result of which the deceased received multiple injuries on his person and became senseless at the spot. While he was being removed to the Capital Hospital he died on the way. The bicycle of the deceased was also badly damaged. The deceased was a healthy young man of 24 years. He for a long time was accustomed to the use of bicycle, he was working as a tailor at Bhingarapur and his monthly income was about Rs. 200/- from that source. The mother and the brother of the deceased were completely dependant on the income of the deceased.

3. The opposite party, the General Manager of the Orissa Road Transport Company Limited, has opposed and controverted the claim of the Petitioners in all its aspects. Apart from saying that the claim of the Petitioner was barred by limitation, bad for non-joinder of parties and not maintainable for some other reasons, it is stated that the driver of the bus No. ORG 1970 was not driving the bus rashly, negligently or at a very high speed at the time of the accident; he while crossing the bridge blew the horn of the bus and took the vehicle to the right side of the road in order to avoid the cyclist on the left side of the road; but the deceased suddenly turned his cycle to his right side and thus he himself came in contact with the left side of the bus. As soon as the driver heard the sound that the cyclist dashed against the left side of the bus, the driver stopped the bus and then saw that the cyclist was lying on the left side of the road close to the bus. It is further stated that the bus did not dash against the cyclist, he was not run over by the bus or dragged by it as alleged by the claimants. It is also averred that the deceased probably was learning cycle and as such not being able to control his cycle he suddenly dashed against the bus which was passing by his right side. According to the opposite party as the deceased himself was responsible for the unfortunate accident, the opposite party is not liable to pay any compensation in this case. It is also stated that the income of the deceased was never Rs. 200/- per month as stated in the claim petition.

4. The Tribunal held that the accident which resulted in the death of the deceased was due to the negligence of the driver of the bus as well as that of the deceased and both of them were responsible 50: 50 for the said accident. It further held that the income of the deceased was at best Rs. 75/- per month and he at best could pay Rs. 25/- per month towards the maintenance of the claimants. It found that the mother of the deceased was about 50 years of age and was likely to live upto her 60th year and that the minor brother of the deceased was mad and invalid and was expected to depend on the income of the deceased at least till he attained majority. Calculating the likely financial benefit which would have devolved on the mother and the invalid brother of the deceased within a period of ten years at Rs. 3,000/- at the rate of Rs. 25/- per month, the Tribunal assessed the liability of the opposite party at half of the said amount, on its finding of contributory negligence on the part of the driver as stated above, and ordered for the payment of Rs. 1,500/- as compensation to the claimants.

5. Mr. Rautary, the learned Counsel for the Appellants at the outset questioned the finding of the Tribunal regarding the contributory negligence on the part of the cyclist. According to Mr. Rautary the accident took place only due to the rash and negligent driving of the driver of the bus and the deceased in no way was responsible for the accident, as he was on the extreme left side of the road and the bus coming from behind at a high speed dashed against the deceased and caused his death.

6. Before proceeding to assess the evidence on record it is worthwhile

mentioning the finding of the Tribunal on this respect of the matter. It finds that the speed of the bus was about 15 to 16 miles per hour when the occurrence took place; the width of the bridge was more than 20 feet; the cyclist was on the left side of the road and the bus was passing on the right side of the cyclist leaving sufficient space for the cyclist to pass. It further finds that the defence case, that the deceased was novice and that he lost his balance when he saw the bus overtaking him on the bridge, is probable; and on that finding it holds the cyclist guilty of contributory negligence. After recording the aforesaid findings it further holds that the driver of the bus was also responsible, for contributory negligence as he should have judged that the cyclist was not steady and so he should not have negotiated the bridge till the cyclist passed out of the same. On that finding the Tribunal holds the driver also responsible for contributory negligence in this accident. The learned Counsel for the opposite party has very seriously challenged the last mentioned finding of the Tribunal regarding contributory negligence of the driver.

7. As the court below has found both the driver and the deceased equally responsible for the accident and the counsel appearing for both the parties have challenged that finding, one has to examine the evidence on record to that effect with care and circumspection. At the outset it must be said that a driver of a bus obviously would not be able to know if a cyclist on the left side of the vehicle, and not in front of it, for some reason or other moves close to the vehicle and there by strikes or dashes against the left side of the body of the vehicle. True it is that a cyclist or a pedestrian in front of a vehicle does not behave in a normal manner and the driver is capable of noting his such movement then one would expect the driver to slow down or even to stop his vehicle in order to avoid a possible dash against such a cyclist or pedestrian in front of the vehicle. But a driver driving a vehicle in an ordinary speed and having sufficient space on the road to safely overtake others on the left side of the road, would not be expected to slow down the speed or stop the vehicle merely on the off chance of a person on the left side of the vehicle to behave or conduct himself in an unusual manner. A driver cannot be expected to anticipate danger to himself or to some others without any visible cause for the same, and if his driving at the relevant time is found to be of a normal order and expected standard he cannot be made liable for something which occurs due to an abnormal behavior or unexpected conduct of other on the road not capable of notice at the proper time by the driver. It is not an uncommon feature that many cyclists moving on the road do not at all bother to be attentive to wards any fast moving vehicle coming from behind, and they move in a reckless and care-free manner without being mind full of the dire consequences which might result due to their flamboyant movement.

8. In the present case, the court below, as stated above, has found on a consideration of the evidence on record that the deceased cyclist was moving on the left side of the road, and, the bus was passing on the right side of the cyclist leaving sufficient space for the cyclist to pass. O.P.W. 4 on whose evidence the court below, for good reasons, has placed immense reliance has testified to the

fact that the cyclist, who was going on the left side of the road, suddenly swerved towards his right when the bus was close to him and so the driver of the bus steered it to its right side. Thereafter the cyclist came in contact with the left side of the bus and the driver stopped the bus then and there. "He has also stated that he did not expect or apprehend that the cyclist would so suddenly move to his right side resulting in the accident. In his opinion, the cyclist was either a novice or he got panicky when he found the bus moving close to him and so he moved towards the right side of the road as a result of which the accident took place. O.P.W. 4 was the information Officer of the Radhanath Training College, Cuttack and there is absolutely no reason to disbelieve the testimony of this responsible Government servant. Nothing has been suggested to, much less elicited from him to show that he falsely supported the cause of the Orissa Road Transport Company against the claim put forward by an old and poor woman. His evidence is supported by the evidence of O.P. Ws. 1, 2 and 3. O.P.W. 2, a Homoeopath who was traveling in that bus, apart from satisfactorily corroborating the above evidence of O.P.W. 4, has further stated that the cyclist in moving towards his right side as stated above dashed against the left side of the bus at its middle and the driver of the bus stopped it immediately after the accident. He has also very categorically stated that the bus did not dash against the cyclist. There is nothing to disbelieve the evidence of O.P.W. 4 to the above effect or to doubt his veracity in any manner. O.P.W. 2, the driver of the bus, and O.P.W. 3, the conductor of the bus, also give a similar picture of the incident as narrated by the aforesaid witnesses. The evidence of O.P. Ws. 1 and 3 gets ample corroboration from the independent and reliable eye witness version of O.P.W. 2 and 4.

9. The Court below on good and convincing grounds has not placed reliance on the evidence of P. Ws. 3 and 4, the only two alleged eye witnesses to the occurrence examined on behalf of the claimants. P.W. 4 states that the bus coming from behind dashed against the cyclist and the cyclist got stuck up to the left side front bumper of the bus due to which the cyclist was dragged for about 8 to 10 cubits; but P.W. 3 does not give any such picture of the incident. He rather states that the cyclist, on being dashed by the bus coming from behind, was pushed to the right side of the road. Both of them state that in the said accident the cyclist sustained only bleeding injuries on his nose and mouth.

From that fact it is quite evident that the cyclist only dashed against the bus and was certainly not dragged by the bus for about 8 to 10 cubits as stated by P.W. 4, for in that case he would have sustained various injuries of severe type on the different parts of his body, and would probably have died instantaneously at the spot.

10. On a perusal of the evidence of P. Ws. 3 and 4 and the discussion of the same in the impugned judgment I agree with the finding of the court below that their version of the incident is not worthy of credence.

11. From the reliable and convicting evidence on record it is quite evident that

the accident took place as the cyclist who was passing on the left side of the road swerved towards his right side when the bus was passing close to him and he came in contact with the left side body of the bus and in that manner got dashed against the bus, fell down at the spot so sustaining some bleeding injuries on his nose and head and later when he was being taken to Bhubaneswar Hospital he died on the way.

12. Neither P. Ws. 3 and 4 have stated nor has it been suggested to O.P.W. 1 to 4 that before the bus came near the cyclist the latter was not driving his cycle in a normal manner on the road. As there is nothing on record to show any such thing it was not expected of the driver to slow down or stop the bus on the anticipation that the cyclist might come in the way of the bus. All the above mentioned witnesses have consistently stated that the cyclist was passing on the road on its left side and while the bus came near the cyclist swerved to his right and the accident took place.

13. On the consistent and reliable evidence of O.P.W. 1. to 4, I am satisfied that the bus was overtaking the cyclist on his right side by leaving sufficient space for the cyclist to move conveniently on the road and so at that time it was for the cyclist to take care of himself to see that he did not come in contact with the bus in any manner. But on the contrary just when the bus was overtaking the cyclist, he suddenly swerved to his right, the bus driver accordingly steered to his right, in order to give more space to the cyclist, and when the bus that way was overtaking the cyclist the latter unfortunately dashed against the left side body of the bus and the accident took place. There is also reliable evidence to show that at the time when the accident took place the bus was moving at a slow speed. As the above version of the incident is established on the reliable evidence discussed above and this version, on a consideration of all the facts and circumstances of the case, seems more probable than the case put forward by the claimants, I am inclined to take the view that the accident took place only because of the negligence of the cyclist, and the bus driver was not at all negligent in the affair and he in no manner was responsible for the said accident.

14. Mr. Y. S.N. Murty, appearing for the Respondent, submitted that the compensation amount of Rs. 1,500/- awarded by the court below on the basis of its finding of contributory negligence on the part of the driver has already been paid to the claimants. No cross-appeal has been filed for setting aside the order of the Tribunal. Accordingly, the order of the Tribunal for payment of compensation cannot be interfered with in this appeal even in spite of my aforesaid view that the driver was not in any way responsible for the said accident and the accident took place because of the negligence of the deceased himself.

15. On the above discussion of the evidence on record and my conclusions therefrom stated above this appeal for the enhancement of the quantum of compensation awarded by the Tribunal cannot succeed and is accordingly dismissed, but in the circumstances there will be no order as to costs of this

appeal.