
(1990) 05 AHC CK 0011
In the Allahabad High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sudesh Bhalla and Others

RESPONDENT

Date of Decision : 26-05-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 96
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1991) 2 ACC 133 : (1991) ACJ 225

Hon'ble Judges : N.M. Mithal, J;G.D. Dube, J

Bench : Division Bench

Judgement

G.D. Dube, J.—These two appeals have arisen against the judgment and order of Motor Accident Claims Tribunal, Bijnor, allowing the claim of respondents and directing the two appellants to pay Rs. 60,000/-. Out of this amount the opposite parties 2 to 4 namely U.P. State Road Transport Corporation (hereinafter referred to as Corporation), regional Manager, U.P. State Road Transport Corporation, Bareilly and Assistant Regional Manager of U.P. State Road Transport Corporation, Bareilly and Moradabad respectively were directed to pay Rs. 40,000/- and Rs. 100/- as costs. The appellant New India Assurance Company was directed to pay Rs. 20,000/- and Rs. 50/- as costs to the claimants. They were also asked to pay interest at the rate of 6 percent per annum. Since both the appeals arise out of the same judgment and order, we are deciding the same by this common Judgment.

2. Some of the facts are not disputed Prithviraj Bhalla working as commission agent, resident of Muzaffer Nagar was travelling in a private taxi No. USF 7476 Muzafar Nagar to Noorpur route in district Bijnor on 15-2-1977. It was being driven by Jaipal Singh, U.P. Roadways has hearing No. USA 8193 was facing driven by Javed Akhtar on Bijnor Bethaur Road. The two vehicle collided at Noorpur crossing of the aforesaid two roads at 11.20 a.m. The taxi overturned and fell into a khudd causing serious injuries to Prithviraj Bhalla. The injured was taken to Government dispensary Noorpur at 11.50 a.m. After-some treatment he was removed to district hospital Bijnor where has succumbed to his injuries at

Section 10 a.m. on 16-2-1977.

3. The claimants had alleged that the roadways bus was being driven negligently and rashly. There was no negligence on the part of the driver of the taxi. The life expectancy in the family of claimants was alleged to be up to the age of 70 years. It was urged that by that time the deceased would have earned Rs. 1,70,000/- which the claimants had claimed as compensation.

4. The corporation authorities and the taxi owner (sic) accident. The quantum of compensation claimed by the claimants was also paid to be excessive.

5. After appraisal of the evidence led before him the learned Tribunal Judge came to the conclusion that both the drivers of the bus and taxi were negligent in driving their vehicles at the crossing where the accident in question took place. Hence applying the principle of contributory negligence the aforesaid apportionment of damages was made. Consequently the Tribunal Judge had fixed the responsibility of compensation at 60% for the bus driver and 40% for the taxi driver. The Tribunal Judge held that Prithviraj Bhalla used to contribute Rs. 6000.00 per annum for the maintenance of the claimants, Computing the total loss by applying multiplier of ten the learned Tribunal Judge had calculated total compensation at Rs. 60,000/-.

6. Learned Counsel for the corporation urged that regulation 6 and 7 of the Driving regulations contained in the Tenth Schedule to the Motor Vehicles Act. 1939 had been violated by the car driver. Hence corporation was not liable to pay compensation. These Regulations read as under:

6. The driver of a motor vehicle shall slow down when approaching a road intersection a road junction or a road corner, and shall not enter any such intersection or junction until he had become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

7. It was urged that had the taxi driver waited or slowed down while approaching road intersection, then the accident would not have taken place. It was argued that the bus being a heavy vehicle and being driven on the main road should have been allowed to cross the intersection i.e. the Noorpur crossing. In support of his contentions, learned Counsel for the corporation has placed reliance upon cases in *Sital Dei v. Ram Singh Pearey* 1974 ACJ 458 *Subsini Panda v. State of Orisa* 1984 ACJ 276 and *District Transport Co-operative Society Ltd. and Another Vs. Janak Rani and Others*, .

8. The facts and evidence placed before the Tribunal not warrant the conclusion that the bus driver was not at all at fault. The Corporation had not examined Javed Akhtar, the driver of its bus before the Tribunal. The driver of car was also

not examined. The claimants had examined Suehri Singh a local resident near the place of occurrence as P.W. 3 His version was that the bus had dashed against the taxi causing the taxi to overturn and fall in a Khud. Believing this version the learned Tribunal Judge had held in the concluding paragraph 10 of his judgment that the drivers of both vehicles were rashly and negligently driving their vehicles and both of them should be held liable for accident. In the concluding portion of paragraph 13, the learned Judge relying upon *Maya Mukherjee and Others Vs. The Orissa Co-operative Insurance Society Ltd. (now New India Assurance Co. Ltd.)*, held that the driver of a bus had a right of way through the main road and the driver of the should have waited and allowed the bus to pass. The learned judge observed that, it such circumstances, the driver of bus had the last opportunity of avoiding the accident. On this basis, the learned Judge had fixed the responsibility of compensation at sixty per cent for the bus driver arid forty per cent for the taxi driver. The learned tribunal Judge had not given any reason as to why the Corporation was liable to the extent of 60% of compensation if the bus driver had the last opportunity to avoid the collision. The ratio of ease law cited by the learned Judge was wrongly applied. In that case the vehicle which had the last opportunity to avoid accident was held liable to the extent of 40% only.

9. The conclusions of the trial Judge cannot be said to be erroneous. Regulation 6 quoted above applied to the bus driver also even though the bus moving on the main road had a right to proceed along with that road and others should have entered the road only after they have given way to the bus approaching the intersection of the road. Regulation 6 says that the driver of a motor vehicle shall slow down when approaching a road intersection etc. There is no evidence to show that the driver of the bus had followed this regulation. The Corporation had chosen to keep the driver away from the witness box. In these circumstances it is not open to the corporation to plead that the other driver was at fault and the bus driver was not at all reckless or negligent in driving his vehicle.

10. The claimants had filed the judgment in a criminal case started against the driver of the bus with relation to accident in question, and in that case the driver Javed Khan had admitted his guilt and later on convicted u/s 279 and 304-A, I.P.C. The conviction of Javed Khan under, the said sections can be relied upon in this case. The learned trial Judge had considered the case *Govind Singh and Others Vs. A.S. Kailasam and Another*, . The conviction of the bus driver and the circumstance that on account of collision the taxi had overturned and fallen into a Khudd reveals that bus must had been driven with a high speed. As a result of such speed the car had overturned. In these circumstances the lower court was justified in fixing liability of corporation to the extent of 60%. The car had also not followed the regulation No. 7 Had the driver followed the regulation No. 7 that the accident could have been averted. Considering the above circumstances we find no error in the judgment of the lower court in holding the corporation liable for damages to the extent of sixty per cent. The case laws cited by the learned Counsel for the corporation are not applicable on the facts of this case.

In the case 1974 Accident Cases Journal 458 the deceased was longing his road with grass when the Truck proceeding on the (sic) who had suddenly come on the road. In the case of District Transport Co-operative Society Ltd. and Another Vs. Janak Rani and Others, the collision has taken place when the vehicle entering the main road had entered the road with great speed. As we have seen above the circumstances on record indicate that both the vehicles must have been driven at a very high speed. Since the bus driver had been convicted we feel that there is no justification to hold the other driver solely liable for the accident.

11. Our conclusion in the proceeding paragraphs answers the second contention of the learned Counsel for the Corporation that in case of contributory negligence the liability should be fifty per cent on the bus owner and the remaining on the car owner. This contention is not correct. We agree with the conclusion of Tribunal Judge that the Corporation was liable to the extent of 60 per cent.

12. Learned Counsel for the Insurance company raised only one point. It was urged that the Tribunal Judge had not passed any decree against the car owner, hence the money could not be realised from the Company, This contention is correct u/s 96 of Motor Vehicles Act. 1939, the Insurance Company is only required to satisfy the judgment passed against the insured person in respect of his liability which is covered by a policy under Sub-clause (b) of Clause 1 of Section 95 of the Act. However, this was a mistake on the part of the trial Judge, This can be corrected in the appellate court and a decree may be passed against the owner of the car, opposite party No. 1.

13. Learned Counsel for the respondents urged that even though the respondents have not filed any cross-objection, the respondents have right to plead that the compensation awarded by the Tribunal Judge was grossly inadequate. It was urged that at least the multiplier of sixteen should have been applied in calculating the compensation and there the respondents should be allowed further compensation.

14. The above submission by the respondent is seriously challenged by appellants and it is urged that if the claimant-respondent failed to prefer an appeal or even to file a cross-objection, he has lost his right to challenge the amount of compensation determined by the Tribunal. In such a situation, it is contended, it must be assumed that the respondent was satisfied with the award made.

15. We find no force in the above contention of the learned Counsel for the two appellants that in absence of an appeal or cross objection having been filed by the respondents, this court has no jurisdiction to enhance the compensation. It is noteworthy that the appeals against the order of the Tribunal Judge lie before the High Court u/s 110D of the Motor Vehicle Act 1939. Rule 21 of the Accident Claims Tribunal Rules, Uttar Pradesh provides the extent to which the CPC may apply in cases pending before the Accident Claims Tribunal as it is a special

forum. The rules do not provide the extent to which the provisions of CPC may be applied in the appellate court, Rule 22 of the above rules simply provides the manner in which the appeals may be filed. There was no necessity to provide for the procedure to be followed in High Court Such appeals was obviously to be governed by the Code of Civil Procedure. Hence the provision of Order 41 the Code may be applied as far as they applicable. We are, therefore, of the opinion that the provisions of Order 41 of the CPC may be applied in the appeals arising out of the Judgment of Claimant Tribunal.

16. We have come across certain cases in which provision of Order 41, Rule 33 of the CPC was applied in appeal filed u/s 110D of Motor Vehicles Act. The first case is Sumanbai and Others Vs. State of M.P. and Others, . The Division Bench of Madhya Pradesh High Court had considered the contention raised by respondent No. 3, the Insurance Company, in that appeal which had alleged that even though company has not filed any appeal it was entitled to challenge the quantum under Order 41 Rule 33 of the Code of Civil Procedure. The Bench agreed that such a question could be raised under Order 41 Rule 33 C.P.C. but held that since this defence as to quantum was not open to the insurance company, benefit of this provision cannot be availed by it. In National Insurance Co. Ltd., Jaipur Vs. Smt. Tulsi Devi and Others, , a learned single Judge of the Rajasthan High Court replying on Pannalal Vs. State Bombay and Others, held that an appellate court can give relief to the respondent as against other respondents also under Order 41 Rule 33, C.P.C. whether or not a cross-objection had been filed by such respondent. In that case reliance was also placed on Murari Lal v. Gomati Devi 1985 (2) Accident Claims Cases 158. Thus the above cases favour the view that an appellate court can grant relief to the respondent in motor claim cases even if the respondent had not filed any appeal or cross-objection.

17. Rule 33 of the Order 41 of the CPC reads as under:

33. Power of court of appeal: The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal of objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

The above rule empowers the appellate court to pass such decree as may be passed even though the respondents might not have filed any appeal or cross-objection against the impugned order. Hence adequate relief can be granted to the respondent in this case.

18. It has not been disputed that the deceased was thirty eight years old at the time of his death. The life expectancy in the family of the deceased at the age of seventy was also not seriously disputed. Hence the active contribution to the maintenance of his family by the deceased could be normally for more than twenty years that is up to the age of fifty eight to sixty years. In such a situation, the application of multiplier of sixteen to the annual income of the family cannot be said to be unreasonable. The calculation of the contribution of the deceased to his family at Rs. 6000/- per annum has not been disputed. Thus, the total compensation to be awarded to the claimants comes to Rs. 96,000/- out of which a deduction of twenty per cent on account of uncertainties of the life and lump sum nature of the payment should be made. The total liability of the two appellants therefore comes to Rs. 77800/-.

19. For the reasons mentioned above the two appeals must fail. However, the judgment of the Tribunal Judge should be modified. The Tribunal Judge had made a mistake in calculating the liability. Out of Rs. 60000/- the corporation was held liable to the extent of sixty per cent and the Insurance Company to the forty per cent. According to this appointment, the liability should have been Rs. 36,000/- for the corporation and Rupees 24000/- for the Insurance company. We are, however, correcting this mistake of calculation in this order.

20. Both the appeals are dismissed. The order of the lower court is modified and the claimants are held entitled to Rs. 77800/- as damages with six per cent interest from the date of application from the opposite party No. 1, Jaipal Singh, the corporation including respondents 5, 7 and 8 of First Appeal No. 373 of 1989 and the appellant Insurance company. The corporation shall pay Rs. 46,680/- and the Insurance Company shall pay the remaining amount i.e. Rupees 31,120/-. The corporation and Insurance company shall, however, pay the costs awarded by the lower Court proportionately.

The costs of these appeals shall be easy.