

(1979) 08 AP CK 0024

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 610 of 1977

United India Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Malla Rama Devi and Others

RESPONDENT

Date of Decision : 29-08-1979

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 348

Citation : (1983) 53 CompCas 362

Hon'ble Judges : Ramanujulu Naidu, J

Bench : Single Bench

Advocate : K.G. Kannabiran, for the Appellant; C. Narasimhacharya, for Respondent Nos. 1 to 3 and D. Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujulu Naidu, J.—Aggrieved by the order made in Original Petition No. 7 of 1972, on the file of the Motor Accidents Claims Tribunal, Visakhapatnam, presided over by the 1st Additional District Judge, Visakhapatnam, awarding compensation in a sum of Rs. 10,000 to the petitioners therein, the United India Fire and General Insurance Co. Ltd., Madras, the first respondent therein, has preferred the above appeal.

2. The facts giving rise to the above appeal lie in a narrow compass and may be briefly stated: On June 1, 1971, the lorry bearing No. APP 2721 was loaded at Rajahmundry with bags of onions and potatoes by Satyanarayana and Company for being transported to Anakapalli, The lorry was being driven by Lakkavarapu Demudu (RW. 1). One Veerunaidu, employed in Satyanarayana and Company, as a khalasi, accompanied the goods and travelled in the cabin of the lorry up to Tuni. At Tuni Veerunaidu got down from the cabin and sat on top of the loaded lorry in spite of R.W. 1's protests. After the lorry left Tuni and covered some distance, there was a sudden burst of the front tyre of the lorry as a result of which the lorry pulled to its right side, turned turtle and fell into a nearby ditch. The dead body of Veerunaidu was found underneath the bags of onions. The

widow and the two minor children of Veerunaidu, therefore, instituted Original Petition No. 7 of 1972, on the file of the Motor Accidents Claims Tribunal, Visakhapatnam, u/s 110A of the Motor Vehicles Act praying for payment of compensation in a sum of Rs. 20,000 alleging that on account of the rash and negligent driving of the lorry by R.W. 1 and also on account of defects in the lorry the accident took place resulting in instantaneous death of Veerunaidu. The appellant with which the lorry was insured and the owner of the lorry are impleaded as respondents Nos. 1 and 2, respectively, to the original petition. The original petition was resisted by them contending, inter alia, that R.W. 1 was not guilty of rash or negligent driving of the lorry at the time of the accident, that on account of the bursting of the front tyre of the lorry it went out of control, turned turtle and fell into the ditch, that the accident could not be averted by R.W. 1 and that, in any event, the deceased was guilty of contributory culpable negligence, he having sat on top of the loaded lorry involved in the accident and that the claimants were, therefore, not entitled to payment of any compensation. The Tribunal found that the accident was not due to any rash or negligent driving of the vehicle by R.W. 1. The Tribunal, however, awarded compensation to the claimants, presumably relying upon the decision of a Division Bench of this court in Zakaria and Others Vs. Naoshir Cama and Others, , that irrespective of proof of absence of rashness or negligence on the part of R.W. 1, the liability of the appellant to compensate the legal representatives of the deceased, Veerunaidu, was absolute. In that view, while absolving the owner of the lorry of the liability, the appellant was directed to pay compensation in a sum of Rs. 10,000 to the petitioner in the original petition.

3. It is rightly urged by the learned counsel for the appellant that the basis of the impugned award passed by the Tribunal is erroneous and unsustainable, that proof of negligence is necessary before the owner of a vehicle or the insurance company, with which the vehicle is insured, can be held to be liable for the payment of compensation in a motor accident claim case and that it is so held by their Lordships of the Supreme Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, , expressly overruling the decision of this court in Zakaria and Others Vs. Naoshir Cama and Others, .

4. It may be noted that the plea of the appellant is that the accident was due to vis major or an act of God, in that R.W. 1 could not have anticipated the cause of the accident and had no control over the same. In other words, the theory of inevitable accident is invoked by the appellant.

5. It is well settled that in claims for damages in motor accidents cases the normal rule is that it is for the claimant, who alleges negligence, to prove the same. In some cases, the rule may cause hardship to the claimant, because it may be that the true cause of the accident is not known to the claimant and is within the exclusive knowledge of those sought to be mulcted with damages or it may be that the accident took place in such circumstances as to render it practically impossible for any one to speak to its happening just like in a case of

a sudden accident on a highway where there are no witnesses or where persons who could speak to the occurrence are not available for whatever reason it be. With a view to mitigate the rigour of proof of negligence, under such circumstances, the doctrine of *res ipsa loquitur* is invoked. It means that the accident speaks for itself. There may be certain accidents which are self-speaking. The principle behind the doctrine is that the accident by its nature is more consistent with its being caused by culpable negligence of those sought to be mulcted with damages than by other causes. In such cases, the mere fact of the accident is *prima facie* evidence of such negligence and it is sufficient for the claimant to prove the accident, whereby a presumption of negligence on the part of those sued for damages arises. In other words, the initial onus cast upon the claimant is discharged and the burden of proof is then shifted to the opposite party or parties to establish that the accident could not be avoided at any cost. The doctrine of *res ipsa loquitur* does not, therefore, dispense with the requirement of proof of negligence alleged by the claimant and it only affects the mode of its proof. As a corollary of the doctrine, it follows that the doctrine does not apply when the cause of the accident is known.

6. As already stated, in the instant case, the cause of the accident was the bursting of the front tyre of the vehicle and the plea put forward by the owner of the vehicle as also by the appellant before the Tribunal is that the driver of the vehicle could not have anticipated the cause of the accident and had no control over the same. In other words, the plea put forward in defence is that the accident resulted from a latent defect which could not be discovered by the exercise of reasonable care. The plea thus dispenses with the initial onus of proof cast upon the claimants and the burden of proof is shifted to the owner and the driver of the vehicle to establish that the accident occurred without any fault on their part and that despite all reasonable care taken by them the latent defect could not be discovered. I must, however, remark that the counter filed by the owner of the vehicle does not disclose the condition of the tyre when it burst. It is needless to state that the tyres of the vehicle ought to be in a perfect condition so that the vehicle may not endanger the lives of others travelling on the road. Bursting of tyres generally does not take place in new tyres. Old tyres beyond the maximum capacity should not be used. Rule 348(1) of the Andhra Pradesh Motor Vehicles Rules, 1964, enacts that pneumatic tyres in use on every motor vehicle should be kept properly inflated and in good and sound condition. Sub-clause (2) of the rule enumerates the circumstances giving rise to a presumption that the tyres are not in good and sound condition. Not only there is no pleading in the counter filed by the owner of the vehicle as to the condition of the tyre which burst, but also no evidence was let in to establish that the tyre, that led to the accident, was in a perfect condition to be used and that the tyre was being checked or examined at regular intervals.

7. There is not even a whisper in the testimony of R.W. 1, the driver of the vehicle, that the tyre, which led to the accident, was in a perfect condition. It, therefore, follows that the owner of the vehicle and the appellant failed to

discharge the burden of proving that the tyre which burst was in a perfect condition and that the accident was the result of vis major. In the circumstances, the owner of the vehicle cannot escape liability of payment of compensation to the claimants. In law, the liability of the owner of the vehicle passes on to the appellant, it having insured the vehicle involved in the accident. The award of the Tribunal, though wrongly based upon the theory of absolute liability of the appellant, is sustainable. Fortunately, for the owner of the vehicle, no appeal was preferred against him by the claimants.

8. Sri Kannabiran, learned counsel for the appellants, does not rightly assail the reasonableness of the quantum of compensation awarded to the claimants.

9. In the result, the appeal fails and is dismissed with costs of respondents Nos. 1 to 3.