
(1995) 11 BOM CK 0050
In the Bombay High Court
Case No : F.A. No's. 477 and 478 of 1988

Vishwasrao Narayan Pawar and Others

APPELLANT

Vs

Lata Gopal Waghmale

RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Citation : (1996) ACJ 422

Hon'ble Judges : R.M. Lodha, J;Ashok Agarwal, J

Bench : Division Bench

Advocate : S.R. Kudrolli and A.R. Kudrolli, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—Heard Mr. S.R. Kudrolli, learned counsel for the appellants in both the appeals. Both the appeals arise out of common award passed by the Motor Accidents Claims Tribunal, Satara, dated 6.6.1986 in two claim petitions, viz., M.A.C.P. No. 72 of 1983 and M.A.C.P. No. 73 of 1983 arising out of one accident and hence, both these appeals have been heard together and are disposed of by this common judgment.

2. By the impugned award dated 6.6.1986, the Motor Accidents Claims Tribunal, Satara, awarded compensation of Rs. 30,000/- to the claimants in M.A.C.P. No. 72 of 1983 together with future interest at the rate of 10 per cent per annum from the date of application till the payment of the entire amount. An award of Rs. 55,000/- was passed in favour of the claimant in M.A.C.P. No. 73 of 1983 together with future interest at the rate of 10 per cent per annum from the date of application till the entire payment was made.

3. Mr. Kudrolli, the learned counsel appearing on behalf of the appellants in both the appeals, raised threefold submissions, (i) that the Tribunal erred in holding that the driver, Ramdas Shankar Sabale, appellant No. 2 in both the appeals, had driven the truck bearing registration No. MHQ 2413 rashly and negligently and as a result of which two persons, viz., Shrirang Gopal Waghmale and Jalandar Gopal

Gaikwad died; (ii) that even if the negligence of truck driver Ramdas Shankar Sabale is held it was only to some extent and the deceased Jalandar Gopal Gaikwad who was driving the motor cycle MTM 2192 was guilty of contributory negligence; and (iii) that in C.P. No. 72 of 1983 the Tribunal was not justified in awarding an amount of Rs. 13,000/- towards the marriage expenses of claimant Lata.

4. To appreciate the contentions raised by the learned counsel for the appellants, briefly the facts relevant for the present purpose may be adverted to. On 23.4.1983 the truck bearing registration No. MHQ 2413 owned by appellant No. 1 in both the appeals, viz., Vishwas Narayan Pawar (for short "owner") and driven by appellant No. 2, Ramdas Shankar Sabale (for short "driver"), was proceeding from Arphal to Bhuinj Factory. The truck was loaded with about 10 tons of sugar-cane. For reaching from Arphal to Bhuinj Factory, the driver was required to pass through road from Arphal to Waduth and from Waduth to Arale. There is a bridge on the Krishna river in between Waduth and Arale village. After crossing the bridge, the road takes turn to south and after a distance of about 60 to 70 paces, the road was descending. While the truck driver crossed the bridge, the motor cycle bearing registration No. MTM 2192 being driven by Jalandar Gopal Gaikwad was coming from opposite direction. Shrirang Gopal Waghmale was the pillion rider on the said motor cycle. The road was under repairs and on both the sides heaps of stones were stored. Immediately after the truck driver crossed the bridge on Krishna river, about 1 furlong away, the accident took place between the truck and the motor cycle resulting in instantaneous death of Jalandar Gopal Gaikwad who was driving the motor cycle and Shrirang Gopal Waghmale who was the pillion rider.

5. Two claim petitions came to be filed by the claimants. M.A.C.P. No. 72 of 1983 has been filed by the sister and sister-in-law of the deceased Shrirang Gopal Waghmale, the pillion rider and M.A.C.P. No. 73 of 1983 has been filed by the widow of rider of motor cycle, Jalandar Gopal Gaikwad. In both the claim petitions, the claimants prayed for compensation of Rs. 1,00,000/- each against the owner, driver and insurer of the truck MHQ 2413.

6. It appears from record of the case that the insurer filed the written statement first contesting the claim of the claimants and, thereafter, the owner adopted the written statement filed by the insurer. The driver did not choose to file any written statement. The defence set out by the insurer in its written statement was that the driver of the truck was driving the truck in normal speed on the left side of the road and the accident occurred because of the negligence of the motor cycle rider inasmuch as the motor cycle was being driven by Jalandar Gopal Gaikwad with fast speed and he gave dash to the truck on the cleaner's side. A technical plea was raised by the insurer in the written statement that insurance company of the motor cycle was necessary party.

7. The Tribunal framed eight issues in all. Claimants led evidence by examining Kamal Waghmale, Sulochana Gaikwad, Pandurang Maruti Sankpal, Uttam Anna-

saheb Mapari, Ramesh Rajaram Thorat while the opponent parties examined the driver Ramdas Shankar Sabale as their witness.

8. In both the claim petitions, the Tribunal after recording the evidence and hearing the counsel for the parties reached the conclusion that the truck MHQ 2413 at the time of accident was driven rashly and negligently by driver and as a result of which Jalandar Gopal Gaikwad and Shrirang Gopal Waghmale died. After the assessment of compensation, the Claims Tribunal awarded a sum of Rs. 30,000/- to the claimants in C.P. No. 72 of 1983 along with interest at the rate of 10 per cent per annum from the date of application and in C.P. No. 73 of 1983 awarded a sum of Rs. 55,000/- along with interest at the rate of 10 per cent per annum from the date of the application till actual amount was paid.

9. Except the evidence of the driver, there is no direct evidence on record on issue No. 4 relating to rash and negligent act of the driver. Immediately after the accident panchnama of the place of accident was prepared and a copy of that panchnama has been exhibited as Exh. 63 by the Tribunal. On the basis of the evidence of the driver, the panchnama and the situation at the place at which the accident occurred, it is to be found out whether the accident occurred because of rash and negligent driving of the driver of the truck or not. The driver deposed in his deposition before the Tribunal that on 23.4.1983 he was driving the truck MHQ 2413 from Arphal to Bhuinj Factory and the said truck was loaded with ten tons of sugar-cane. According to him, the road from Arphal to Waduth was north-south and then the road would take turn towards east and after entering Waduth village the road would turn towards south. On both sides of the road there were houses in village Waduth and the said road after taking a turn towards west would go towards Arale. In between Waduth and Arale there was bridge on Krishna river and the road was rising from western end of bridge towards Arale. The driver testified that at the relevant time he was driving the truck with slow speed of 5 to 7 km. per hour and the truck was in first gear. After crossing the bridge, according to him, the road would take turn towards south and after a distance of about 60-70 paces, it would descend slightly. After he climbed the raised road and took turn towards south the accident took place. The road was quite straight and he saw the motor cycle at a distance of 3/4 km. The repair work on the road was going on and on both sides of road, heaps of stones were stored. The driver deposed that the width of the main road was 4-5 paces and there was kacha road of 2-3 paces on both sides of the main road. After seeing the motor cycle, according to the driver, he signaled by making light dim and full but the motor cycle was being driven at high speed of 60-65 km. per hour and though he took the truck to the left side of the road and tried to stop and blew horn, the motor cycle came and dashed against the rear right side wheel of the truck.

10. From the panchnama it is revealed that the entire width of the road was about 28 ft. The tar road was about 12 ft. wide while the kacha road was about 8 ft. on either side of the tar road. The front portion of the truck at the place of the

accident was found on the left side of tar road while the rear portion of the truck was found on the right side of the tar road. When the panchnama is read in the light of the deposition of the driver, it would be seen that the driver did not take enough care to ensure that the motor cycle which was coming in the opposite direction could pass through. Admittedly, on both sides of the tar road there were heaps of stones stored and in that situation though the truck driver sought to take his truck on the left side and in fact he took the front portion of the truck on the left side but the rear portion of the truck remained on the right side of the tar road and, therefore, sufficient space was not left by the truck driver to ensure that the motor cycle could pass through the tar road avoiding the heaps of stones lying on the kacha road. Since the rider of the motor cycle as well as the pillion rider died in the accident instantaneously, the claimant obviously could not lead any direct evidence and in the circumstances looking to the place of the accident and position of the truck, obviously the burden on the applicants to prove rash and negligent act of the driver is *prima facie* discharged and shifted to the opponents to dislodge the presumption which would arise by applying the *maxim res ipsa loquitur*. The deposition of the driver is not sufficient to show that he took due and reasonable care and caution to avoid the accident. As a matter of fact the deposition of the driver that the motorcyclist was drunk and driving the motor cycle with high speed is not believable in the facts and circumstances of the case and, therefore, his evidence that it was because of the rash and negligent act of the motor-cyclist that the accident occurred, cannot be believed and is not reliable. Since the truck driver was driving the truck in the night and the vehicle being a heavy vehicle and that too loaded with ten tons of sugar-cane, it was his bounden duty to take due care and caution while driving the said truck. The road was zigzag, up and down with the heaps of stones on both sides of the road, the care required by the driver was much more and particularly when he saw a motor cycle at a distance of 3/4 km. The time was around 10.00 p.m. to 10.30 p.m. In that situation from the material on record, we are satisfied that the driver omitted to take reasonable care and caution to avoid the accident and the accident occurred due to his negligence. The Tribunal has considered the evidence at great length on issue No. 4 relating to rash and negligent act of the driver and on overall consideration of the matter, we are satisfied that the view taken by the Tribunal is possible and justified warranting no interference by this court in the appeals. In view of this finding, we are not persuaded by the argument advanced by the learned counsel for the appellants that in any case even if it is held that at the time of accident, the driver was guilty of rash and negligent driving, it was only to some extent and that the motor-cyclist also contributed to the accident and the motor-cyclist was guilty of contributory negligence. As a matter of fact, from the entire record we have not been able to find out that this defence was either set out in the written statement or that this point was argued by the opponent party before the Tribunal. In this view of the matter, we do not find any merit in the first two contentions of the learned counsel for the appellants.

11. Lastly, as noted above, the learned counsel for appellants argued that the Tribunal was not justified in awarding Rs. 13,000/- towards marriage expenses of claimant Lata in C.P. No. 72 of 1983. There may be some merit in the contention of the learned counsel for the appellants that the award of compensation under the head "marriage expenses" for claimant Lata to the tune of Rs. 13,000/- was not justified but taking into consideration the entire facts and circumstances of the case and the amount of award passed by the Tribunal, we do not find that the compensation awarded by the Tribunal in C.P. No. 72 of 1983 to the tune of Rs. 30,000/- was grossly exorbitant warranting interference by this court in the appeal. The deceased was about 25 years at the time of the accident and while awarding Rs. 30,000/- the Tribunal gave only Rs. 5,000/- towards loss of love and affection which cannot be said to be adequate. All in all compensation awarded by the Tribunal to the tune of Rs. 30,000/- in C.P. No. 72 of 1983 is just and proper and, therefore, while sitting in appeal, we would not like to interfere with the just sum awarded by the Tribunal even if the award of compensation towards the marriage expenses of claimant Lata is not held to be justified. It may be observed here that while awarding the compensation to the tune of Rs. 30,000/- in C.P. No. 72 of 1983, the Tribunal has awarded future interest at the rate of 10 per cent per annum only from the date of application though the normal rate of interest awarded in such matters is 12 per cent per annum. But since we are not inclined to interfere with the amount of compensation of Rs. 30,000/-, we are also not inclined to increase the rate of interest from 10 per cent to 12 per cent because overall we find that the compensation awarded in C.P. No. 72 of 1983 is just and proper and that meets the ends of justice.

12. Consequently, we do not find any merit in these appeals and dismiss both the appeals accordingly with no order as to costs.