

Mahendra Singh Vs. Smt. Krishna Devi

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Court : Allahabad

Decided On : Aug-30-1978

Reported in : AIR1979All4

Judge : H.N. Seth and ;V.K. Mehrotra, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110 to 110F; [Hindu Succession Act, 1956](#) - Sections 8; [Fatal Accidents Act, 1855](#) - Sections 1A; Code of Civil Procedure (CPC) - Sections 2(11)

Appeal No. : F.A.F.O. No. 239 of 1973

Appellant : Mahendra Singh

Respondent : Smt. Krishna Devi

Advocate for Def. : Ashok Verma and ;K.B.L. Gaue, Advs.

Advocate for Pet/Ap. : Shanti Swarup Bhatnagar and ;A.K. Sharma, Advs.

Disposition : Appeal dismissed

Judgement :

Mehrotra, J.

1. This is an appeal under Section 110-D of the Motor Vehicles Act against an award dated 24th May, 1973 awarded by the Motor Accidents Claims Tribunal,

Meerut (hereinafter referred to as the Tribunal') in claim petition No. 147 of 1968. By this order a sum of rupees 25,000/- was awarded by the Tribunal to Smt. Krishna Devi by way of compensation with interest at 6 per cent per annum. The award was made in the circumstances appearing hereinafter.

2. Ompal Singh, aged about 19 years, who was the son of claimant Smt. Krishna Devi, was returning on a scooter on Aug. 8, 1968 at about 11, 15 a.m. to his house from the shop of his father. As he reached near the Kavi Nagar Railway Crossing, on Hapur-Ghaziabad Road a bus with registration No. DLP 3622 coming at a high speed from the opposite direction dashed against the scooter, as a result whereof Om Pal Singh died on the spot. This vehicle was owned by the appellant's father Sardar Bachan Singh. In the claim petition, giving rise to the present appeal, the said Bachan Singh was impleaded as opposite party No. 1. The appellant was substituted in his place during the pendency of the proceedings before the tribunal during which Bachan Singh died. The vehicle was insured with the Northern India General Insurance Company Limited, which is respondent No. 2 in this appeal. The purchase of the vehicle had been financed by respondent No. 3, namely, Motor and General Finance Limited. While it was being driven by respondent No. 4, Harchand Singh. According to the case set up by the claimant, Smt. Krishna Devi, the accident had been caused on account of the rash and negligent manner in which the vehicle was being driven, A sum of Rs. 25,000/- was claimed as compensation by her. The defence of the present appellant before the Claims Tribunal was that the real owner of the vehicle was the Motor and General Finance Limited (respondent No. 3) which had financed its purchase particularly because he had yet to complete the payment of the purchase price. According to the defence taken by the appellant, the accident took place on account of the rash and negligent driving of the scooter by the deceased who was carrying a dog on it and that, inasmuch as, the deceased was only a student and was not helping his father in his business, the claimant was not entitled to any compensation on account of the death of the deceased. It was also pleaded that the husband of the claimant was carrying on his own business and was a well-to-do person and that, on that account as well, the claimant was not entitled to any compensation. The defence of respondent No. 2, the Northern India General Insurance Company Limited, inter alia, was that it was not established that the vehicle was being driven by a person

holding a driving licence and the accident was not notified to it. It was, therefore, not liable for payment of any amount as compensation. In any case, its liability could not exceed any amount beyond Rs. 20,000/-. Respondent No. 3 set up the plea that though it had financed the purchase of the vehicle, yet as the same was under the control of the purchaser who had already paid the major portion of the amount due by the time the accident took place, and only a fraction of the amount remained to be paid, the liability was entirely of the purchaser. The driver, namely, respondent No. 4, Harchand Singh, did not put in any defence and the case proceeded ex parte against him.

3. The tribunal framed the following seven issues for determination:

1. Whether the accident took place as a result of any rash or negligent act on the part of the person driving the bus No. DLP 3622. If so, its effect?
2. Whether the accident took place as a result of any rash or negligent act on the part of the deceased? If so, its effect?
3. Whether the person, who was driving the bus at the time of the accident, held a valid licence? If not, its effect?
4. Whether the applicant is entitled to get any compensation? If so, what amount and from which of the O. Ps.
5. Whether the petitioner is not the legal representative of the Sri Ompal Singh deceased and, if so, is she entitled to maintain the claim?
6. Whether the bus in question was the property of M/s Motor and General Finance Co. Ltd. Delhi-6? If so, its effect?
7. Whether the driver of the bus in question was not driving the bus at the alleged date and time under authority or permission of Sri Bachan Singh, father of the respondent No. 1? If so, its effect?.

4. Its finding on issue No. 1 was that the driver of vehicle DLP 3622 was highly negligent and had driven the same in a rash manner. The accident took place on account of rash and negligent act of the driver. On issue No, 2 the finding recorded

by the tribunal was that the accident did not take place due to any negligence on the part of deceased Om Pal Singh. It held under issue No. 3 that the driver Harchand Singh had a valid driving licence at the time the accident took place while on issue No. 5 the finding recorded by the tribunal was that being a legal representative of her son, the claimant (respondent No. 1) was entitled to maintain the claim petition. It took the view, while deciding issue No. 6, that as some part of the sale-price had remained unpaid, not only Bachan Singh (father of the present appellant) who is the purchaser but also Motor and General Insurance Limited (respondent No. 3) which had yet to receive part of the sale consideration, continued to retain right over the vehicle and latter had correctly been impleaded along with the purchaser by the claimant as an opposite party in the claim petition. The vehicle in question was a property of both of them. While deciding issue No. T, it found that respondent No. 4 was a regular driver of the vehicle on behalf of the owners so that it could not be pleaded that the vehicle was being driven without the authority or permission of the appellants father. Thereafter, it proceeded to consider the question of quantum of compensation. It came to the conclusion that even if compensation is awarded at the rate of Rs. 100/-per month, the claimant was entitled to a sum of Rs. 48,000/- on the basis, that the claimant could have expected financial assistance from her deceased son at least at that rate for nearly 34 years. Since, however, the claimant had herself asked for a sum of rupees 25,000/- by way of compensation, the tribunal awarded that sum against all the opposite parties to the claim petition. The liability of the Insurance Company was held to be only to the extent of Rs. 20,000/- as per the term of the policy of insurance.

5. The learned counsel for the appellant has raised three questions before us. Firstly, according to him, as the accident had not been caused on account of rash and negligent act of the Bus driver but was caused on account of the rash and negligent driving of the deceased himself, the appellant could not be held liable for payment of any amount by way of compensation. Secondly, that even on the assumption that the accident occurred on account of the vehicle having been driven in a rash and negligent manner, the amount of compensation assessed by the Tribunal was erroneous and, thirdly, that the claimant, who is the mother of the deceased was not the legal representative of her deceased son and couldnot,

therefore, maintain the claim petition.

6. We find on the evidence on record that the Tribunal rightly concluded that the accident in which Ompal Singh lost his life had been caused due to the rash and negligent manner in which vehicle No. DLP 3622 was being driven, and not on account of any rash or negligent act on the part of the deceased in driving the scooter. The two witnesses, namely, Raghuraj Singh (P. W2) and Jogendra Barar (P. W. 3) who were eye-witnesses of the accident, have given a consistent version of the accident indicating that the vehicle was coming at a very fast speed and while passing the railway line bumped, went towards the right side and dashed against the scooter of the deceased Ompal Singh. On account of the impact, Om Pal Singh died on the spot as also the dog which had accompanied the deceased on the scooter. The vehicle itself was damaged and fell down in a ditch on the side of the road and turned turtle. The driver, Harchand Singh (Respondent No. 4) appeared before the Tribunal as D. W. 1 and in his deposition stated that he was driving the vehicle at a moderate speed of 30 Km. per hour and while crossing the railway line, applied his brakes and the bus was in his control. According to him, the scooter driven by the deceased, Om Pal Singh struck against the left mudguard of the bus and with a view to avoid the accident, he (Harchand Singh) took the vehicle to the other side but could not control it, with the result that it fell down in the adjoining ditch. He, however, stated that the dog as well as Om Pal Singh died on the spot.

7. From the circumstances, it is apparent that Harchand Singh was not giving out the true version of the accident in which Om Pal Singh lost his life. The Tribunal, in our opinion, has rightly concluded from the circumstances appearing before it that the accident took place because Harchand Singh was driving the vehicle in a rash and negligent manner. The vehicle driven by him had, admittedly, crossed the railway crossing. The scooter, on which the deceased Om Pal Singh was coming, was admittedly coming from the opposite direction and Om Pal Singh as well as the dog died instantaneously after the impact of the vehicle against the scooter. The vehicle itself fell down in a ditch. All these would not have happened unless the vehicle was being driven in a negligent manner and at a fast speed. One would expect that while negotiating the railway crossing, if the vehicle was being driven

at a moderate speed and such care as is alleged had been taken by the driver Harchand Singh, the impact with the scooter would not kill the driver of the scooter and the dog accompanying him on the spot and the vehicle would not have fallen in the ditch adjoining the road. The eye-witness account given by the two witnesses produced by the claimant before the Tribunal appears to be the correct version of the incident and we have no reason to differ from the view taken by the Tribunal in that regard.

8. Coming to the second submission of the learned counsel for the appellant, we find that the amount of compensation also has been reasonably assessed by the Tribunal. It is true that the deceased Om Pal Singh was still a student and was not gainfully employed on full time basis. Nevertheless, the claimant could base her claim on the assumption that deceased could be potential bread-winner and would have rendered pecuniary assistance to the claimant. The deceased, even according to the case set up by the appellant's father Sardar Bachan Singh, came from a well-to-do family. It could therefore reasonably be expected that he would, after finishing his education, have settled in a productive profession and earn income of a reasonable amount. That he could have done even if he were to join his father's business. The deceased Om Pal Singh came from a family, members of which were long lived and therefore had a good life expectancy. At the time of his death, Om Pal was hardly about nineteen years and his mother (claimant) was 36 years in age. Taking the normal expectancy of life for each of them to be about seventy years, it was rightly assumed by the Tribunal that the claimant could have reasonably expected pecuniary assistance for about 34 years from her deceased son. Assuming that such assistance was hardly of about Rs. 100/-per month, the claimant would have been able to get, by way of pecuniary assistance, much more than Rs. 25,000/-which was claimed as compensation in the instant case. The amount of rupees 25,000/- awarded as compensation by the Tribunal is, to our mind, a reasonable sum in the circumstances brought on record before the Tribunal.

9. The third submission of the learned counsel for the appellant relates to the maintainability of the claim petition, at the instance of the claimant who is the mother of the deceased. According to the argument of the learned counsel, a

mother is not a legal representative of a deceased son and the claimant could not, therefore, seek any compensation on account of death of Om Pal Singh, her son.

We are unable to accept this submission. It is true that Section 110-A of the Motor Vehicles Act provides that where death has resulted from an accident, the application of compensation arising out of the accident may be made by all or any one of the legal representatives of the deceased or by an agent duly authorised by them. The Act, however, does not specify as to who is to be treated as legal representative for the purpose of Section 110-A of the said Act, It has, therefore, to be seen as to who would constitute a legal representative for the purposes of a claim petition under Section 110-A of the Motor Vehicles Act in respect of an accident in which a person has lost his life. In the instant case guidance can be taken from the [Hindu Succession Act, 1956](#). In the case of a male Hindu who dies intestate, the property, under Section 8 of the said Act, shall devolve, firstly, upon the heirs being relatives specified in Class I of the Schedule. Mother is an heir falling in Class I of the Schedule to the Act. The [Fatal Accidents Act, 1855](#) also affords guidance on the question. Section 1A of the said Act, inter alia, enables the parents of a person losing life in an accident caused by the wrongful act or default of another to claim damages. The submission, therefore, that the term 'legal representative' should be so construed as to exclude a claim petition by a person who does not represent the estate of a deceased person and the definition of legal representative as contained in Section 2(11) C. P. C, narrowly construed should be imported into Section 110-A of the Motor Vehicles Act, does not appeal to us. Having regard to the object with which the provisions of Sections 110 to 110-F were enacted it is proper that the term legal representative as used in Section 110-A must be given an extended meaning so as to include all such persons who have a right to claim damages under the Fatal Accidents Act while deciding the question as to who can claim compensation when death has resulted from an accident. The claim petition in the instant case could, in our opinion, be maintained by the mother of the deceased to whom the Tribunal has awarded the compensation,

10. The appeal, in our opinion, has no merit and deserves to be dismissed.

11. A cross-objection has also been filed by the claimant Smt. Krishna Devi (respondent No. 1). As held by us in F. A. F. O. No. 343 of 1973, Virendra Singh v. Smt. Phoolmati, decided on 7-8-1978, such a cross-objection is not maintainable. It therefore, deserves to be dismissed of that ground alone.

12. In the results, we dismiss F. A, F. O. No. 239 of 1973, filed by Mahendra Singh as well as the cross-objection filed by the claimant Smt. Krishna Devi. In the circumstances, however, the parties shall bear their own costs in these proceedings.

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