

State of Uttar Pradesh Vs. Vinod Kumar Bhatnagar and ors.

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Court : Allahabad

Decided On : Apr-12-1984

Reported in : II(1984)ACC23; AIR1984All344

Judge : U.C. Srivastava and ;B.D. Agarwal, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110B

Appeal No. : First Appeal Nos. 219, 260 and 334 of 1967

Appellant : State of Uttar Pradesh

Respondent : Vinod Kumar Bhatnagar and ors.

Advocate for Def. : Mohanji Verma, Adv.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeal dismissed

Judgement :

1. These appeals are directed against the judgment and decree of the Additional Civil Judge, Mirzapur d/- March 23, 1967.

2. On June 15, 1962 the plaintiffs Vinod Kumar and Har Har Prasad were passengers on Bus U. P. C. 5246 belonging to the State Government under the Transport Department and had boarded the same at Varanasi for Churk. The Bus

left Varanasi at 7.30 A. M. one hour behind the schedule on its way to Churkvia Mirzapur. It passed by Chunar situate nearly 28 miles from Varanasi and reached the culvert situate about two miles west of Chunar. Truck No. USM 1004 held on hire purchase agreement by Mela Ram defendant came to the culvert from the opposite direction carrying lime on its way to Varanasi from Mirzapur. It was around 8.30/8.45 A. M. Vinod Kumar had his seat in the upper class by the side by the window towards the right. Hari Har Prasad the other plaintiff was seated behind him in the lower class with the window immediately to his right. Both the Bus and the truck abovementioned tried to negotiate and pass through the culvert at the same time. In the result, the vehicles grazed with each other both on their right sides and in the process Hari Har Prasad sustained fracture on the right elbow while the right arm of Vinod Kumar was altogether amputated leaving merely a stump measuring 8-1/2' behind. Portion of the Bus was also damaged. The truck proceeded ahead and could be caught hold of at Chunar. Both the injured were admitted as indoor patients in the District Hospital, Mirzapur where they received treatment. First information report was also lodged. After some time the plaintiffs were referred to the Medical College, Kanpur for further treatment. Hari Har Prasad instituted original suit No. 18 of 1964 claiming a sum of Rs. 39,200/- as damages jointly and severally against the State, Mela Ram. Panna Lal (the Driver of the Truck) and the British India General Insurance Company Ltd. Original Suit No. 19 of 1964 was brought by Vinod Kumar against these persons claiming Rs. 1,00,000/- as damages--both general and special.

3. In defence it was contended for the State that the accident occurred due to the negligence on the part of the Driver of the Truck and that there was no liability upon the State since there was no negligence on the part of the Driver of the Bus. It was pleaded also that the plaintiffs were guilty of contributory negligence. Mela Ram and Panna Lal defendants pleaded in defence on the other hand that the injury to the plaintiffs resulted due to the rashness and negligence on the part of the driver of the roadways Bus and that in any case the plaintiffs were guilty of contributory negligence. For the Insurance Company it was denied that there is liability arising against it.

4. Both the suits were tried together. The trial court came to the finding that the accident occurred on June 15, 1962 around 8.30/8.45 A. M. at the culvert as alleged by the plaintiffs. The drivers of both the vehicles were negligent. After the engine portion and the cabin of the Bus had crossed the culvert, the two vehicles swerved into their respective left sides which resulted in collusion near the Dala of the Truck. Vinod Kumar, it was further found, had his right arm outside the window at the relevant time while Harihar Prasad had the right elbow on the window sill. In consequence both of them were guilty of contributory negligence. The court below awarded a sum of Rs. 250/- to Hari Har Prasad as special damages for expenses incurred in his treatment besides a sum of Rs. 12,500/- as general damages. In the case of Vinod Kumar the lower court assessed the special damages for expenses incurred towards the treatment at Rs. 1000/- and awarded Rs. 62,000/- as general damages. Out of this amount there was deduction made to the extent of 1/3rd in the case of Vinod Kumar and 1/5th in the other case on the basis of the respective contributory negligence of these plaintiffs. The balance has been apportioned between the State on the one hand and Mela Ram/Panna Lal on the other in the ratio of 2/3rd and 1/3rd respectively, that is to say, the State has been found liable to the extent of 2/3rd and the defendants Mela Ram and Panna Lal were held liable to the extent of 1/3rd. The liability of the Insurance Company has been fixed at Rs. 20,000/- only. In the net result thus Hari Har Prasad has been awarded Rs. 10,200/- out of which Rs. 6,800/- were to be borne by the State and the rest by the defendants Mela Ram/Panna Lal. In the case of Vinod Kumar he has been awarded in the net result a sum of Rs. 42,000/- only of which Rs. 28,000/- are to be borne by the State. This as mentioned above is subject to Insurance Company bearing compensation in the amount of Rs. 20,000/-.

5. Aggrieved the State-defendant No. 1 has preferred First Appeal No. 219 of 1967 in the case of Vinod Kumar and First Appeal No. 260 of 1967 against Hari Har Prasad and others. Mela Ram, Panna Lal and the Insurance Company have joined together to file First Appeal No. 334 of 1967 against the judgment and decree passed in original suit No. 18 of 1964 brought by Hari Har Prasad.

6. We have heard the learned counsel for the parties and perused the record.

7. Controversy does not exist in these appeals in regard to the following :--

(i) The plaintiff-respondents travelled by the roadways Bus No. UPC 5246 on June 15, 1962 from Varanasi on way to Churk via Mirzapur. Vinod Kumar was seated in the upper class by the side of the window to his right and Hari Har Prasad at his seat immediately behind him in the lower class. The Bus was driven by D. W. Kamla Shanker Dube, it also had in its crew D. W. Chandra Deo is an alternative driver and D. W. Hanuman Singh was the conductor thereof.

(ii) Truck No. USM 1004 was held by Mela Ram defendant No. 2 on hire purchase basis during the relevant period and it was driven by Panna Lal (defendant No. 3). It was on way to Varanasi from Mirzapur carrying lime.

(iii) The accident occurred at the culvert about two miles from Chunar towards Mirzapur during 8.30 to 8.45 A. M. The culvert is 20'6" in width. Towards east of this culvert after some distance, it was found, there was a short curve and the level of the road was considerably raised at the curve; thereafter slope continued up to some distance before the culvert began. Towards the west of the culvert the road was straight throughout. Local inspection was made by P. W. Sri R. C. Verma the then Civil & Sessions Judge. Mirzapur on Oct. 18, 1964 in connection with criminal appeal No. 142 of 1963 (Panna Lal v. State) pending before him. The Inspection note was placed on the record of these civil suits and Sri Verma was also examined as a witness for the plaintiff in proof thereof. He also made note and testified that towards the west of the culvert one could see up to a distance of nearly 400'. It was observed that the distance of the Curve up to the culvert was considerable and if the driver of the Bus apprehended danger, it could be stopped by the side of the culvert.

(iv) As a direct consequence of the two vehicles grazing against each other near the emergency door of the bus there was damage caused to that portion of the Bus. The damage has been referred to in his testimony by D. W. N. C, Sarkar the foreman of the Roadways Bus who inspected the same on June 15, 1962 and prepared his report also. It is dated July 6, 1962. It was observed by him that the right side body skin of the Bus was scratched and torn moreover in the upper class up to the emergency door and further that the emergency door, the window frame

and the window glass had been damaged. P. W. Dr. K. S. Jindal, Medical Officer, District Hospital, Mirzapur examined both the injured plaintiffs shortly after the accident. He was examined as witness on commission by the trial court. It was revealed that in the process Vinod Kumar had sustained the following injuries :--

- (i) Right Arm amputated in the middle with all the muscles, nerves and vessels cut;
- (ii) Lacerated wound 1' X 1/2' X bone deep on the front of upper part of right arm.

Upon X-ray it was found that there had been fracture of the lower end of right amputated humerus bone. In the case of Hari Har Prasad the other plaintiff it was found that he sustained lacerated wound 9' X 9' X bone deep on the back of right elbow, arm and fore-arm. X-ray revealed that the position of right humerus bone near elbow joint and head of radius bone were missing.

(v) Vinod Kumar plaintiff had at the relevant time the right arm outside the window while Hari Har Prasad had the right elbow on the window sill. Both these plaintiffs have attempted to suppress this and tried to maintain that they had their arms inside the Bus. The trial court has not believed this part of their version and has attributed contributory negligence to them on this account. None of these plaintiffs has preferred cross-appeal or cross-objection against the deduction made from the compensation awarded to them on the footing of contributory negligence attributed to them by the trial court.

8. Upon consideration of these primary facts it is manifestly clear in our opinion that the accident resulting in the injuries to the plaintiffs occurred on account of the negligence of the drivers of both the vehicles. Both, it would appear, tried to negotiate the culvert at the same time. None of them cared to stop at the sight of the other. It was little realised that it could be dangerous for both of them to attempt to pass through the culvert in the usual speed without any one of them making pause and enabling the other to pass by. The Bus had left Varanasi one hour behind the schedule. This was established from the version of Kamla Shanker driver in his report to the Officer-In-Charge as well as from the report of the additional driver namely, D. W. Chandra Deo. There was some hurry on this account to make up for the delay before reaching Mirzapur. Even if the Bus was

driven with the Speed of 20/22 miles per hour as tried to be made out by the two drivers, it was large enough for purposes of crossing over the culvert specially when it is stated that the truck which proceeded from the opposite direction had not reduced its speed either. The head on collision was averted, it would appear, thanks to width of the culvert but then it could be easily felt that since there was a ditch towards the south, both the vehicles could not safely pass by at the same time. From the local inspection made by P. W. Sri R. C. Varma referred to above, it transpires that the level of the road was higher at the curve whereafter the slope began and this ended little before the commencement of the culvert. This suggests that the Bus Driver could in all probabilities spot the truck proceeding from the opposite direction before it set down to cross the culvert. In its speed the bus did come ahead of the culvert in so far as the engine/cabin portion is concerned but the portion thereafter got grazed with the truck coming from the opposite direction. The truck driver on his part also did not stop to let the Bus pass by. We are unable to agree with the learned counsel for the defendants-appellants in First Appeal No. 334 of 1967 that no negligence could be attributed to Panna Lal who drove the truck. The difference is of the degree only though there can be no denial that both of them were guilty. The trial court has taken note of this fact in making the apportionment and the liability attributed to the defendants 2 and 3 is to the extent 1/3rd only while the State has been held liable to the extent of 2/3rd.

9. In *Chaturji Amarji v. Ahmad Rahim Bux* 1979 Cri LJ 107 (Guj) cited for the plaintiff-respondent, the appellant lost his right forearm while travelling in the Bus. The arm was completely severed from the elbow joint. It appears that two vehicles on the opposite direction were driven on narrow road at the same time and in consequence one had grazed against the other. A Division Bench of the Gujarat High Court held that in the circumstances it was expected of both the drivers that they should proceed with extreme care and caution and at the very slow speed while negotiating the road which was narrow, it is well settled, their Lordships observed, that where primary facts have been proved to raise a prima facie assurance that the accident was caused due to the negligence on the part of the opponents, the issue shall be decided in favour of the claimant unless the opponents by their evidence provide some answer which is adequate to displace the prima facie evidence. The opponents had to prove that in all the circumstances

which they knew or ought to have known they took all proper steps to avoid danger and once they failed to prove then they must be held liable to pay damages to the claimants. The primary facts found therein were held to tell their own story, namely, that the drivers of both the vehicles were grossly negligent and it was for them to discharge the burden to showing that the accident happened in spite of their having taken all care and caution expected of the drivers in such circumstances. It was further observed (at p. 112) :--

'The correct criterion in such cases is first to find out as to whether it is a case in which arm or any part of the body of a passenger travelling by the bus was protruding unreasonably, and whether such an act on (he part of the passenger was fraught with danger; and lastly, whether a conclusion was inevitable that he received (he injury as a result of his own lack of care and positive negligence on his part. Secondly, a question may also be asked as to whether the accident resulting in the injuries to the passenger was the result of contemporaneous negligence on the part of the passenger as well as the driver or drivers of the vehicles concerned. In this connection, it has to be borne in mind that primarily the drivers owe a duty of safety to such passengers which consists of driving the vehicles slowly with care and caution, while crossing each other and not to bring their respective vehicles very close to each other so that any such passenger who is sitting with his arm or any part of his body resting on the window sill or the window rail or sitting in such a way that it protrudes therefrom, does not get hurt when the vehicles cross each other.'

'We are fortified in the view which we are taking in this behalf by a decision of this Court in First Appeal No. 74 of 1969 decided by D. A. Desai J. (as he then was) on 2-2-1973 (Guj) as also a decision of the Supreme Court referred to therein, being the decision in the Jamnagar Motor Transport Union Pvt. Ltd's case, Civil Appeal No. 551 of 1963 decided by the Supreme Court on 14-1-66. In the appeal decided by D. A. Desai J. (as he then was) a passenger was sitting with his hand protruding out of the window from a bus in which he was travelling and he received injury when another Vehicle coming from the opposite direction passed grazing, and the contention about negligence was negatived. Reference was made to the Supreme Court decision in Jamnagar Motor Transport case (supra) in which case

also the deceased was resting his head travelling in a passenger bus on the side bar of the window; and a contention that resting the head itself was a negligent act was negated. The Supreme Court observed that the act of resting his head could not be said to be a rash act. D. A.

Desai J. after referring to the Supreme Court decision observed as follows :--

'Exactly identical is the situation before me, namely, that the applicant was resting his hand in the window and the hook of the incoming vehicle caused injuries to him and on this basis it could not be said that the injuries were suffered by him by his keeping his hand on the window.'

10. To the same effect is the decision of a Division Bench of this Court reported in *Ramesh Kumar Awasthi v. Collector Saharanpur* 1983 TAC 159 : (AIR 1982 All, 425). In that case also the appellant was travelling by a Bus. Another Bus coming from the opposite direction grazed against the body of the Bus in which the appellant was sitting. By the impact of the grazing of the Bus the window glass was smashed and the appellant's right hand was cut and slit from the above the right elbow joint. It was held that it was the duty of both the drivers to insure safety of the passengers and for that purpose they should have taken care to leave to sufficient space between the two vehicles at the time of crossing each other. Hon'ble K. N. Singh J. speaking for the Bench observed (at Pp. 428-29) :--

'The legal position is clear that it is the duty of the driver to drive the vehicle in such a manner as to safeguard the safety of the passengers. If two vehicles while crossing each other graze their bodies without there being any justification for the same, a presumption about the negligence of the drivers would arise. Both the drivers should have realised that if the two vehicles cross each other in speed without leaving sufficient space between them the safety of the passengers would be jeopardised, it was the duty of the both the drivers to ensure safety of passengers.'

'It is a matter of common knowledge that passengers sitting near the window rest their hand on the window sill specially when on a long journey in the countryside. The driver of a bus carrying passengers on long journeys is expected to have

knowledge of this fact. The drivers of the two buses were bound to take precaution against the possibility that while grazing each other some person might be placing his hand or elbow on the window sill, since the two vehicles came too close to each other resulting into accident without there being justification for the same it has to be presumed that the drivers had failed to take reasonable care for the safety of passengers and therefore they were negligent. In *Jamnagar Motor Transport Union v. Gokaldas Pitamber's L. Rs.* 1966 Acc CJ 42 the Supreme Court in similar situation where the two buses grazed while crossing each other held that both the drivers were negligent. The view that we are taking has been taken by various High Courts in a number of cases. Reference may be made to *State of Punjab v. Smt. Guranwanti*, AIR 1960 Punj 490; *Sushma Mitra v. M. P. S. R. T. C.* 1974 Acc CJ 87 : (AIR 1974 Mad Pra 68); *Delhi Transport Undertaking v. Krishnawanti* 1972 Acc CJ 423 : (AIR 1973 Delhi 196) and *General Manager State Road Transport Corporation. v. Krishna*, AIR 1981 Kant 11 : 1981 Acc CJ 273.'

11. As stated above in the case before us the plaintiffs have been held guilty of contributory negligence by the trial court. None of the plaintiffs-respondents has preferred cross appeal or cross-objection. They have submitted to the deductions made out of the compensation awarded on the footing of contributory negligence attributed to them. In face of this we are not called upon to decide in this case whether on the facts and in the circumstances a case of the contributory negligence could be said to be made out. Suffice it may to note that this depends essentially on the facts and in the circumstances of each case and in the two decisions referred to above it was held that the plaintiffs could not be held guilty of contributory negligence. The decisions of the High Court of Madhya Pradesh reported in *Sushma Mittra v. M. P. State Road Transport Corporation*, 1974 Acc CJ 87 : (AIR 1974 Madh Pra 68) is also to the same effect. We need not examine this issue in greater detail because as said above this part of the finding of the trial court has not been challenged by the plaintiffs-respondents and they have not preferred any appeal against the same.

12. Learned Chief Standing Counsel urged that the trial court has erred in awarding a sum of Rs. 62,000/- as general damages to Vinod Kumar plaintiff without being regard to the evidence relating to that subject. It does appear that in arriving at this

conclusion the trial court has not made reference to the relevant material placed on the record. But on detailed consideration of the same we are of the view that the amount awarded cannot be claimed to err on the subject of being excessive. Vinod Kumar was aged about 20 years when the accident took place. He had passed High School Examination in 1956 and Intermediate Examination in 1959, both in II Division. At the relevant time he was student of B. A. (Part III). Even subsequent to the permanent impairments suffered by him, Vinod Kumar could manage to pass through B. A. in 1964 and M. A. in 1966. He had perforce to pick up writing gradually by the left hand. It was deposed by him that he put in a series of applications for various jobs but was not taken in on account of having lost the right arm. He is the only son of his father who was well placed being posted as the Senior Accounts Officer in the U. P. State Electricity Board. There is nothing unreasonable in the contention of this plaintiff that he had the normal expectancy of getting a job securing in the minimum of Rs. 300/- per month. A sum of Rs. 62,000/- looks substantial at its face no doubt but then this has to be necessarily spread over the long span of years during which the plaintiff may legitimately hope to survive. Even if the life expectancy is put at 65, it would come to this that the amount awarded to him on this account would stand spread over a length of 45 years and upon this being so done it would come to nearly Rs. 1350/- only per annum. In our opinion the permanent disability caused to him is not over estimated in being tried to be recompensed by this amount spread over to the life of the concerned plaintiff. Even if it is assumed that Vinod Kumar gets some job, it may not be doubted that he would continue to remain handicapped in the amount of Rs. 1350/- per annum in any case on account of his disability besides incurring expenses and undergoing mental pain and anguish in seeking the aid of others for certain day to day purposes as deposed by him.

13. In regard to Hari Har Prasad the other plaintiff a sum of Rs. 12,500/- has been assessed as general damages. This plaintiff testified that he expected at least to get a job securing Rs. 75/- per month. He was about 18-19 years of age when the accident took place. The date of birth in his case is Mar. 2, 1943. He had passed High School Examination in 1959 and had appeared at the Intermediate Examination whereafter this accident took place. The Intermediate Examination was passed by him still in the year 1962 in Second Division. He testified that the

right hand did not resume normal functioning despite prolonged, medical treatment and that he felt paid and unable even in pursuing the ordinary agricultural occupation. Consideration being had to the normal expectancy of life in his case also the estimate of Rs. 12,500/- is spread over a period of 45 years cannot be claimed as exaggerated.

14. In cases of disablement by virtue of loss of limb or any permanent, impairment, such as arising in relation to Vinod Kumar, the compensation goes to a living person. The experience of the Courts is that in disablement cases, compensation awards are always higher than even in cases of death. Bodily injury leads to deprivation. The deprivation may bring with it loss of earning or earning capacity; expenses of having to pay others for what otherwise he would do for himself and loss of enjoyment of life, or a diminution in full pleasures of life. The gravity and degree of the deprivation i. e. whether one or more limbs have been lost the duration of the deprivation and the degree of awareness of the deprivation have to be borne in mind. These principles laid down by the House of Lords in *West (H) & Sons v. Shephard*, (1964) AC 326 have been widely followed including in the cases of *Chaturji Amarji* (1979 Cri LJ 107) (Guj) (Supra) and *Ramesh Kumar Awasthi* (AIR 1982 All 425) (supra). The amount granted has to be substantial, and not token.

15. Having regard to the discussion made in the above, we do not find force in these appeals which are, accordingly, dismissed. In the circumstances costs of these appeals shall be borne by the parties.

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