

Ramesh Kumar Vs. Gadarai and ors.

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Court : Madhya Pradesh

Decided On : Nov-22-1978

Reported in : AIR1979MP124

Judge : C.P. Sen and ;B.C. Verma, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95(1) and 110B

Appeal No. : Misc. First Appeal No. 83 of 1972

Appellant : Ramesh Kumar

Respondent : Gadarai and ors.

Advocate for Def. : K.M. Agarwal, Adv. for Nos. 1 to 3 and ;A.L. Halve, Adv. for No. 4

Advocate for Pet/Ap. : S.P. Hakim, Adv.

Disposition : Appeal allowed partly

Judgement :

C.P. Sen, J.

1. The appellant has preferred this appeal under Section 110-D of the [Motor Vehicles Act, 1939](#), against the award of compensation of Rs. 18,000/-given to the respondents 1 to 3.

2. The facts not in dispute are that appellant Ramesh Kumar was the owner of motor-cycle No. MPS 2689 and it was insured with the respondent No. 4, Ruby General Insurance Company Ltd. under a comprehensive policy. Ramesh Kumar owned a rice mill at Silyari where the deceased Budharu was employed as a mechanic/helper but he left his job on 3-1-1970. However, in the early hours of 16-2-1970, the appellant came to the house of the deceased at village Pano-sari and took him on his motor-cycle for starting his Mill. On their way to Silyari, the motor-cycle met with an accident and because of the head injuries the deceased died on the spot. The appellant was unhurt. According to the claimants, respondent No. 1 is the father, respondent No. 2 is the mother and respondent No. 3 is the widow of the deceased and they were dependent on him. The deceased was working in the Mill of the appellant on a salary of Rs. 150/- per month as mechanic and he died in the accident due to rash and negligent driving of the appellant. The respondents, therefore, claimed Rs. 50,000/- as compensation. In his written statement the appellant denied that he was rash or negligent in driving his motor-cycle. The appellant was driving his motor-cycle in normal speed and was going from west to east side. The accident took place when he was about to take a turn on the left side on the road crossing at Simga when one motor-truck coming in excessive speed from the northern direction on the Bilaspur-Raipur road took a sudden turn on the left side, that is towards the appellant. The driver gave no horn or warning and the deceased, who was sitting on the pillion, got frightened and he caught hold of the appellant as a result he lost balance and the motor-cycle dashed against a culvert on the road side with the result the deceased died on the spot because of the accident. The deceased was employed in his Mill up to 3-1-1970 and his salary was Rs. 60/- per month and not Rs. 150/- as claimed. Under the circumstances, the appellant is not at all liable for damages. The respondent No. 4, Insurance Company in its separate written statement submitted that under the insurance policy risk of any passenger travelling on the pillion of the motor-cycle was not covered. Therefore, the Insurance Company is not at all liable.

3. The Claims Tribunal found that previously the deceased was in the employment of the appellant in his rice Mill on a monthly salary of Rs. 60/- per month but he left his job on 3-1-1970. On 16-2-1970, the appellant took the deceased on the pillion of his motor-cycle for seeking his help for starting the Mill. On the way, the motor-

cycle met with an accident due to rash and negligent driving of the appellant and the deceased died on the spot. The respondents 1 and 2 being parents and respondent No. 3 being widow of the deceased, they were dependent, on the deceased and they were entitled to compensation amounting to Rs. 18,000/-. This included Rs. 15,840/-towards loss of income for 44 years at the rate of Rs. 30/- per month and Rs. 2,160/- as general damages as he was the only child of the respondents 1 and 2. The Insurance Company was not liable as the deceased was not in the employment of the appellant and the risk of the pillion rider was not covered under the Insurance Policy.

4. The questions to be considered in this appeal are:

- (i) Whether the accident took place due to rash and negligent driving of the appellant ?
- (ii) Whether the quantum of compensation awarded is not justified and proper and
- (iii) Whether the Insurance Company is liable for compensation ?

5. The only eye-witness to the incident in this case is the appellant himself. There are no other eye-witnesses, this is so because the accident took place in the early hours of 16-2-1970. According to the appellant Ramesh Kumar (NAW 1), he was driving at the normal speed and going from west to eastern side on the Tilda-Simga road, when he reached near Simga crossing and was about to take a turn to the left, one motor-truck coming from the northern side on the Bilaspur-Raipur road suddenly took a turn towards him without giving any warning. The deceased got frightened and he grappled with the appellant, as a result he lost his balance and the motor-cycle dashed against a culvert on the road side. There was no fault on the part of the appellant for the accident. He has been rightly disbelieved. The site plan Ex. P. 3 has been prepared by Fattelal Pat-wari (AW. 2). His statement has not at all been challenged. This site plan belies the version given by the appellant. The culvert is found to be at a distance of 59' from the Simga crossing and the dead body of the deceased was found lying down the culvert. Therefore, the accident could not have taken place in the manner deposed by the appellant. Moreover, the road was 21' wide and if the motor-cycle was going on the left side

and the truck also took a turn on the left, there was no possibility of collusion because both were on their left side. The site plan further shows that sufficient dried blood was found at a distance of about 21' from the Simga crossing but the motor-cycle was found 38' away from the blood spots and the dead body was found lying at a distance of 30'. Therefore, the Claims Tribunal was of the opinion that the accident must have taken place where the blood spots were found but since the appellant, who was in full sense, had grown wiser and he had naively and ingeniously manipulated by shifting the motor-cycle by the side of the culvert and by placing the dead body down the culvert. It is pertinent to note that there was no damage to the culvert but the motor-cycle was badly damaged. The appellant has not produced his report. All these circumstances go to show that the accident happened due to rash and negligent driving of the appellant. Even if we accept that the accident happened due to dash of the motor-cycle against the culvert by the side of the road, still this circumstance speaks for itself that this was due to rash and negligent driving of the appellant. In similar circumstances the Supreme Court in *Pushpabai v. Ranjit G. & P. Co.*, 1977 ACJ 343 : AIR 1977 SC 1735, has held that normally it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself' or tells its own story. From the description of the accident given by the plaintiff, the car went to the extreme right and dashed against a tree with violent force, as a result the occupants of the car died. The driver was clearly rash and negligent in driving the vehicle.

6. Now the next question is whether the compensation awarded of Rs. 18,000/- is not just and proper. The Claims Tribunal has found that the deceased was employed on a salary of Rs. 60/- per month as mechanic/helper in the Mill of the appellant but he left his job on 3-1-1970. At the time of his death the deceased was aged 16 years and this is proved from the Birth Certificate Ex. P. 1 proved by C. B. Shrivastava (AW. 1) Principal of the Govt. Higher Secondary School, Simga.

According to respondent No. 1 Gadarai (A. W. 3), he was aged 50 years at the time of the incident while his wife was aged 45 years and the respondent No. 3 was aged 14 years. His father died at the age of 60 years. Deceased Budharu was quite healthy and would have been expected to live up to 60 years. The Claims Tribunal held that deceased would have spent Rs. 30/- on himself and the remaining Rs. 30/- on the respondents 1 to 3. Therefore, he multiplied 30 by 44 i. e. remaining span of life of the deceased, and arrived at the figure of Rs. 15,840/- towards loss of income of the deceased that has been incurred by respondents 1 to 3 due to sudden death of the deceased. The Claims Tribunal has further awarded Rs. 2,160/- as general damages, this way he has come to the figure of Rs. 18,000/- which is the compensation awarded. Though we agree with the amount of compensation awarded, but we are unable to concur with the method of arriving at that figure. The Claims Tribunal has observed that in the course of 1 year of his employment with the appellant there was a rise of Rs. 10/- per month in his salary and the deceased naturally would have obtained further rise in salary in due course with his greater experience in the technical job, but the Claims Tribunal has not given any allowance to the rise in salary which the deceased would have expected to get by the time he retired. Taking in view that his salary would, have risen at least 3 fold, we take his average salary to be Rs. 80/- per month, If half of this amount i. e, Rs. 40/- is taken as the amount which the deceased would have spent on the respondents 1 to 3, this has to be multiplied by 44, remaining span of life of the deceased. The total comes to Rs. 21,120/-, but since the amount is to be paid in lump sum, it is reduced to Rs. 18,000/-. In addition, the respondents are not entitled to any general damages. The respondent No. 3 being widow, aged 14 years, is also expected to live up to 60 years and during all this period she would have been maintained by the deceased. The Supreme Court in *Manjushri Raha v. B. L. Gupta*, 1977 ACJ 134 : AIR 1977 SC 1158, has enhanced the award from Rs. 60,000/- to Rs. 1 Lac taking into consideration the rise in future salary. In that case the deceased was aged 37 years and his life expectancy was taken to be 65 years. Half the amount of his salary multiplied by remaining span of his life was taken to be the loss sustained by his dependents.

7. Section 95 (1) of the Motor Vehicles Act is as under :

Requirements of policies and limits of liability --

In order to comply with the requirements of this Chapter, a policy of Insurance must be a policy which --

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed under Section 108 to transact the business of an insurer, and

(b) insures the person or class of persons specified in the policy to the extent specified in Sub-section (2).

(i) against any liability which may be incurred by him in respect of the death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required --

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the

occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation -- For the removal of doubts it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

8. Under this provision. Insurance Company is not required to cover the risk of a passenger travelling in a vehicle unless the passengers are carried for hire or reward or by reason of or in pursuance of contract of employment. However, Insurance Company can cover greater risk and that will be dependent upon terms of the policy in a particular case. The Supreme Court in *Pushpabai v. Ranjit G. & P. Co.* (AIR 1977 SC 1735) (supra), has held as under (at p. 1746):

'Sections 95 (a) and 95 (b) (i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words 'third party' are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to Sub-section which provides that a policy shall not be required:

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.'

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 05 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.'

9. We have to see what are the terms of the present policy. Ex. 1-NA. 3 is the policy which was taken by the appellant in respect of his motor-cycle from the respondent No. 4, Insurance Company. Section II-liability to third parties of the insurer in the policy is as under:

'Subject to the limits of liability the Company will indemnify the Insured in the event of accident caused by, or arising out of the use of the motor-cycle against all sums including claimants' cost and expenses which the Insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the [Motor Vehicles Act, 1939](#), the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the Insured and excluding liability to any person being conveyed in or on the motor-cycle unless such person is being conveyed by reason of or in pursuance of a contract of employment,

(b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the Insured or any member of the Insured's household or being conveyed by the motor-cycle.

Provided always that the Company shall not be liable in respect of death, injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the motor-cycle for loading thereon or the taking away of the load from the motor-cycle after unloading therefrom,'

The terms of the policy in the aforesaid Supreme Court case were similar to the terms in the present policy except to the extent that the present policy is with

regard to motor-cycle while that was with regard to motor-car and here the risk of gratuitous passenger is not covered. In that case the Supreme Court held that the gratuitous passengers travelling in car were covered by the policy to the extent of the liability accepted by the Insurer i. e. Rs. 15,000/-. But in the present case the risk of the pillion rider of the motor-cycle is not covered unless the pillion rider was being conveyed by reason of or in pursuance to contract of employment. Gurdipsingh Rajpal (NAW. 2), who was the Branch Manager of the Insurance Company, has stated that to cover the risk of a pillion rider, extra charge was being levied but since no such extra charge was paid, the risk was not covered under the present policy. Therefore, if the deceased was simply a gratuitous pillion rider, his risk was not covered under the policy.

10. But we have further to see whether the deceased was being conveyed by reason of or in pursuance of contract of employment. Admittedly, the deceased left his job with the appellant about a month prior to the date of the accident, but when the accident occurred he was being taken by the appellant to start his Mill. Under the policy, the risk of an employee is covered as per requirement of Section 95 of the Act. If the deceased was being carried on the motor-cycle by reason of or in pursuance of contract of employment, then his risk is covered under the policy. Section 95 requires a policy to cover liability in respect of death or bodily injury arising out of and in the course of employment of the employee as required under the Workmen's Compensation Act, 1923. 'Workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is employed on monthly wages not exceeding five hundred rupees in any such capacity as is specified in Sch. II. Helper or mechanic in the rice Mill is covered under Sch. II and the deceased was getting a salary less than Rs. 500/- per month. On the date of the accident, his employment was casual, i. e. only for the purpose of starting his Mill, but since this was in connection with the employer's trade or business, he became a workman though his employment was only for that particular purpose. Therefore, under the policy his risk is covered as he was conveyed by reason of or in pursuance of contract of employment at the time of the accident. Under the Workmen's Compensation Act the risk is covered only when the injury is caused to a workman by accident arising out of and in the

course of employment. There has been notional extension of employer's premises by extending the risk during the period an employee is required to travel in a vehicle for going to his work. The Supreme Court in General Manager, B. E. Section T. Undertaking v. Mrs. Agnes, AIR 1964 SC 193, has held as under:

'Accident arising out of and in the course of his employment -- Notional extension of employer's premises Drivers of B. E. S. T. Undertaking given free transport facility in buses belonging to the Undertaking from depot to his house and vice versa -- Driver meeting with accident while going from depot -- Accident held occurred during course of employment.'

In the present case also the employer was taking the deceased on his motorcycle for starting his Mill and, therefore, the accident arose out of and in the course of his employment. However, under the policy the risk is covered only to the extent of the liability arising under the Workmen's Compensation Act. The deceased was drawing a salary of Rs. 60/- per month at the time of accident and as per Sch. III to this Act, the risk covered is to the extent of Rs. 3600/-only. The Insurance Company is, therefore, liable to the extent of Rs. 3600/-and the balance i. e. Rs. 14,400/- has to be borne by the appellant himself. The Claims Tribunal has relied on the following 2 cases which are clearly distinguishable. The terms of the policy were identical in Unique Motor & General Insurance Co. Ltd. v. Smt. Krishna Kishori, 1968 ACJ 318 (Punj). There, it was held that the risk of a pillion rider was not covered but in that case pillion rider was not being conveyed on the motorcycle by reason of or in pursuance of contract of employment. Similar was the case in K. Gopalakrishnan v. Sankara Narayanan, 1969 ACJ 34 : (AIR 1968 Mad 436). In that case also the pillion rider was not being conveyed by reason of or in pursuance of contract of employment.

11. Accordingly, the appeal is partly allowed, while maintaining the compensation amount of Rs. 18,000/-, the liability is apportioned between the appellant and the respondent No. 4, Insurance Company to the extent of Rs. 14,400/- and Rs. 3,600/- respectively. The appellant to pay costs of the respondents 1 to 3 and bear his own costs. Counsel's fee as per schedule if certified.

