Geetabai and ors. Vs. Hussainkhan and ors.

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Court : Madhya Pradesh

Decided On : Apr-18-1984

Reported in : [1986]59CompCas739(MP)

Judge : P.D. Mulye and ;R.K. Vijayvargiya, JJ.

Acts : Motor Vehicles Act, 1939 - Sections 110D; Scooter (Distribution and Sale) Control Order, 1960

Appeal No. : Miscelleneous Appeal No. 92 of 1978

Appellant : Geetabai and ors.

Respondent : Hussainkhan and ors.

Advocate for Def. : S.S. Samvatsar, Adv.

Advocate for Pet/Ap. : Sujan Jain, Adv.

Disposition : Appeal allowed

Judgement :

R.K. Vijayvargiya, J.

1. This appeal by the claimants under Section 110D of the Motor Vehicles Act, 1939, is directed against the award dated December 20, 1977, passed by the Motor Accidents Claims Tribunal, Ratlam, in Claim Case No. 7 of 1975.

2. The material facts are as follows :

Claimant No. 1, Geetabai, is the widow of the deceased, Khimaji. Claimants No. 2 to 9 are the minor children of the deceased, Khimaji. Khimaji was a resident of village, Istagarkheda, Tehsil Alot District Ratlam. On June 8, 1975, Khimaji had gone to Ratlam to meet his relations. On that day, at 7.45 p.m. when he was going on the road in front of the Government College, he was dashed against by a tempo bearing No. M.P.O. 3929 which was being driven by respondent No. 1, Husainkhan. Khimaji sustained serious injuries in the accident. He was admitted to the hospital. He succumbed to the injuries caused to him on June 13, 1975, in the hospital. Respondent No. 2, Mohammad Shan, was the registered owner of the said tempo on the date of the accident and it was insured with respondent No. 3, National Insurance Company Ltd., in the name of Mohammad Shan. The claimants filed an application under Section 110A of the Motor Vehicles Act claiming Rs. 60,000 as compensation on account of the death of Khimaji. Their case was that the accident was caused onaccount of the rash and negligent driving of the tempo by respondent No, 1 in the course of his employment with respondent No. 2 and, therefore, respondents Nos. 1 to 3 were liable to pay compensation to the claimants.

3. Respondent No. 1 did not appear before the Tribunal and was proceeded with ex parte. Respondent No. 2 contested the claim on the ground that he had already sold the tempo to one Ujagarsingh and was not the owner of the tempo at the time of the accident. He also denied that respondent No. 1 was his employee and the accident was caused on account of the rashness and negligence of respondent No. 1 in driving the tempo. Respondent No. 3 also contested the claim on the ground that respondent No. 2 was not the owner of the tempo at the time of the accident. Both respondents Nos. 2 and 3 admitted that the tempo was insured with respondent No. 3 in the name of respondent No. 2. Respondent No. 4, Ujagarsingh, who was added as party to the application, subsequently contested the claim on the ground that he was not the owner of the tempo at the time of the accident and that respondent No. 1 was not his employee.

4. The Tribunal held that the accident was caused on account of the rash and negligent driving of the tempo by respondent No. 1 and, therefore, he was liable to pay compensation to the claimants. The Tribunal assessed Rs. 8,000 as compensation payable by respondent No. 1. The Tribunal further held that although respondent No. 2 was the registered owner of the tempo and it was also insured in his name with respondent No. 3, respondents Nos. 2 and 3 were not liable to pay any compensation to the claimants because respondent No. 1 was not the employee of respondent No. 2. The Tribunal further held that respondent No. 4 also was not the owner of the tempo at the time of the accident and, as such, was not liable to pay any compensation to the claimants. The Tribunal consequently passed an award directing respondent No. 1 to pay a sum of Rs. 8,000 to the claimants with interest at the rate of 6% per annum from the date of the application till payment. The Tribunal dismissed the claim against respondents Nos. 2, 3 and 4. Aggrieved by the award of the Tribunal, the claimants have preferred this appeal.

5. The learned counsel for the claimants contended that the Tribunal committed an error in holding that respondents No. 2 and 3 were not liable to pay compensation to the claimants. He also contended that the amount awarded by the Tribunal is grossly inadequate and deserves to be suitably enhanced. The learned counsel for respondents Nos. 3 and 4 supported the award of the Tribunal.

6. The following points arise for determination in this appeal.

(i) Whether, on the facts and in the circumstances of the case, the Tribunal committed an error in holding that respondents Nos. 2 and 3 were not liable to pay compensation to the claimants and

(ii) Whether the amount awarded by the Tribunal is grossly inadequate and, if so, what would be the just compensation awardable to the claimants

Re. point No. (I):

7. It is not in dispute that respondent No. 2, Mohammad Shan, was the registered owner of the said tempo on the date of the accident. It is also admitted that the

said tempo was insured with respondent No. 3 and the insurance policy was taken in the name of respondent No. 2 and was in force on the date of the accident. According to respondent No. 2, he transferred the tempo in the year 1970 to respondent No. 4, Ujagarsingh, and the driver of the tempo, Hussainkhan, was not his employee and, therefore, he was not liable for the rash and negligent act of Hussainkhan in driving the said tempo. The further contention is that as respondent No. 2 is not liable, the insurance company is also not liable for the same. Respondent No. 4 led evidenqe to show that he: was not the owner of the tempo at the time of the accident and that he had sold it to one Kanhaiyalal. Itihas further emerged from the testimony of NAW 1, Nazarshah, that the tempo was also purchased by one Govind and that he had purchased it from Govind.

8. In the background of above facts, it has to be decided whether respondent No. 2, who was the registered owner of the tempo at the time of the accident, and the insurance company are liable to pay compensation to the claimants on account of the death of Khimaji caused by rash and negligent driving of the tempo by respondent No. 1. Similar question came up for consideration in Mohammad Ramzan v. Sharifanbai [1982] ACJ 445 (MP) in which one of us (Vijayvargiya J), after considering the cases cited in that case, held as follows (at p. 449):

' If a vehicle is transferred by the owner thereof to circumvent any provision of law and the owner continues to remain the registered owner thereof and if the vehicle is also insured in the name of the registered owner and an accident is caused by the transferee or by a servant or agent of the transferee, in such a case if the law laid down in the English decisions cited by the learned counsel for Banwarilal is followed, the registered owner is not liable. The insurer would also be not liable because the vehicle is insured in the name of the registered owner. In such cases great hardship would be caused to the injured or the dependants of the deceased because the transferee may be a man of straw and they may not be able to recover any compensation from him. In my view, in such cases, the registered owner or the ostensible owner must be held liable for the negligence of the transferee or his servant or agent in the course of his employment or within the scope of his authority, because in transferring possession of the vehicle in contravention of the provision of law, the ostensible owner must bedeemed to

have knowledge that the vehicle will be used by the transferee or his agent or servant and that they might use it negligently or rashly causing injuries to third parties. If with this knowledge the owner transfers the vehicle to circumvent any rule or provision of law, there is no valid reason why he should not be held liable for the negligent act of the transferee or his servant or agent.'

9. The learned counsel for the respondents was unable to point out any reason why we should not approve of the aforesaid observations. The learned counsel for the insurance company, however, sought to distinguish the above decision on the ground that in that case the vehicle was transferred to circumvent the provisions of Scooter (Distribution and Sale) Control Order, 1960, and such being not the case here, the principle laid down in the said decision is not applicable to the present case. This contention has no force. The doctrine of vicarious liability is in a process of evolution. It is a great principle of social justice. In principle, there cannot be any distinction between the two types of cases, viz., a case where a vehicle is transferred to circumvent the provisions of a statute and a case where it is transferred for any other reason if the transferor continues to be the registered owner of the vehicle. If the owner of the vehicle by private arrangement transfers a vehicle to another person but continues to be the registered owner thereof, it would be very difficult, if not impossible, for the injured person or the dependants of the deceased person to find out who is the owner of the vehicle at the time of the accident. The problem will become more complex if there is a series of 'private transfers and the vehicles continues to be under the registered ownership of the original owner. In such cases, the claimants may not get any compensation from the transferee because it may not be known as to who is the actual owner of the vehicle at the time of the accident and such a person may be a man of straw. The helpless claimants also cannot recover compensation from the insurance company because the vehicle is insured in the name of the registered owner. In our opinion, the principle laid down in Mohammad Ramzan's case [1982] ACJ 445 (MP), applies to the case in hand also because the tempo at the time of the accident was under the registered ownership of respondent No. 2 and was also insured in his name with respondent No 3 and when respondent No. 2, who continues to be the registered owner of the vehicle, transferred it, he must be deemed to have knowledge that the vehicle will be used by the transferee or his transferee or his

agent or servant and that they might use it negligently or rashly causing injury to third persons. If with this knowledge respondent No. 2 has transferred the vehicle, there is no valid reason why he should not be held liable for the negligent act of the transferee or his servant or agent. As the vehicle wasinsured in the name of respondent No. 2 at the time of the accident, respondent No. 3--insurance company--also cannot escape its liability.

10. From the cases which have come up before us, we find that the tendency by the registered owners of the vehicles to transfer them by private arrangement without transferring the registration in favour of the transferees is on the increase. There is also the possibility of an unscrupulous owner of a vehicle indulging in fake transfer of a vehicle to avoid his liability to pay compensation to the claimants claiming compensation on account of an accident caused by the vehicle. The principle of vicarious liability must be extended in such cases so that effective relief may be given to the claimants. In such cases, there is no valid reason why the registered owner should not be held vicariously liable for the negligent act of the transferee or his servant or agent in driving the vehicle.

11. The learned counsel for the respondents placed reliance upon a Division Bench decision of this court in Balwant Singh v. Jhannubai [1980] ACJ 126 (MP), in support of his contention that where a vehicle has been transferred before the accident, the registered owner is not vicariously liable for the negligent act of the transferee or his servant or agent. However, the aforesaid decision is not an authority in support of the contention advanced by the learned counsel for the respondents. In that case, it was held that the transferee of a vehicle, even if its registration is not transferred in his name, is liable to pay compensation if the accident was caused after the vehicle was transferred to him. The question whether in such a case the registered owner is also liable for the compensation did not arise for consideration in that case because the claimant did not prefer an appeal against the award of the Tribunal dismissing the claim application against the registered owner.

Re. Point No. 2 :

12. The Tribunal held that the deceased, Khimaji, was 50 years of age at the time of the accident. Khimaji earned his livelihood by agriculture and by grazing cattle. He was maintaining a large family consisting of himself, his widow and eight children. In our opinion, the amount of compensation assessed by the Tribunal is grossly inadequate. Geetabai deposed that the monthly income of the deceased was Rs. 400 to Rs. 500 per month. Geetabai might have exaggerated the income of the deceased. Even if we take the monthly income of the deceased at Rs. 250 per month, assess the dependency at Rs. 200 per month and adopt 10 as the multiplier, the compensation payable to the appellants works out to more than 20,000. Besides, the Tribunal has not awarded any amount under the head ' pain and suffering ' caused to the deceased for the period he remained alive after the accident. Taking into consideration all these facts, in our opinion, itwill be just and proper if the appellants are awarded a sum of Rs. 20,000 as compensation for the death of the deceased, Khimaji. The award of the Tribunal, therefore, deserves to be modified accordingly.

13. As a result of the discussion aforesaid, this appeal is allowed with costs. The award passed by the Tribunal is modified. It is directed that respondents Nos. 1, 2 and 3 shall pay a sum of Rs. 20,000 to the claimants with interest at the rate of 6% per annum from the date of the application till payment. Counsel's fee Rs. 200 if certified.