

State of Madhya Pradesh and anr. Vs. Ratna Devi and ors.

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Court : Madhya Pradesh

Decided On : Sep-07-1990

Reported in : 1991ACJ166

Judge : A.G. Qureshi and ;V.S. Kokje, JJ.

Appeal No. : M.A. Nos. 183 and 184 of 1987

Appellant : State of Madhya Pradesh and anr.

Respondent : Ratna Devi and ors.

Advocate for Def. : Sujan Jain, Adv.

Advocate for Pet/Ap. : C.L. Yadav, G.A.

Disposition : Appeal dismissed

Judgement :

V.S. Kokje, J.

1. This appeal arises out of the accident Claim Case No. 33 of 1985 decided by the Member, Motor Accidents Claims Tribunal, Jhabua by his award dated 27.6.1987. The award in the aforesaid case also covered Claim Case No. 35 of 1985 arising out of the same accident. As this appeal and Misc. Appeal No. 184 of 1987 arise out of the same accident and a common award is being challenged in

them, both these appeals were heard together and are being decided by this common judgment.

2. The accident, out of which these cases arise, occurred on 12.7.1985 when jeep No. MPP 1743 belonging to the State of M.P. was being driven back from Jhabua to Indore by Kanhaiyalal, respondent No. 1, who was employed as driver of the jeep and was a Government servant. The jeep met with an accident at a distance of about 2 km. from Jhabua towards Indore and as a result of the accident two persons travelling in the jeep, namely, Biharilal Yadav and Krishna Narayan Dixit lost their lives on the spot. Biharilal Yadav was a photographer, Sub-Inspector (Ministerial) with headquarters at Indore and Krishna Narayan Dixit was Sub-Inspector (Ministerial) in the office of the Superintendent of Police, Jhabua. In Misc. Appeal No. 183 of 1987 the legal representatives of Biharilal Yadav are the claimants and in Misc. Appeal No. 184 of 1987 the legal representatives of Krishna Narayan Dixit are the claimants.

3. In the Claim Case No. 33 of 1985 filed by the legal representatives of Biharilal Yadav, it was alleged that he was earning Rs. 1,030/- per month as salary and in addition, Rs. 250/- per month as travelling allowance and out of this he used to spend Rs. 1,080/- on his family. It was further alleged that Biharilal Yadav at the time of his death was 39 years of age and the average longevity in the family was 70 years. Compensation of Rs. 1,80,000/- for loss of future earnings, Rs. 25,000/- for pain and suffering due to loss of the deceased to the family and Rs. 25,000/- for the loss of company of the deceased to the family was claimed. Thus, the claim was for a total sum of Rs. 2,30,000/-.

4. In Claim Case No. 35 of 1985, it was alleged that Krishna Narayan Dixit, the victim of the accident, used to earn Rs. 1,080/- as salary and in addition 55 per cent allowance for being posted in a tribal area. Thus, his monthly income was Rs. 1,595/-. He was 43 years of age at the time of his death and the longevity in his family was also said to be 70 years. Compensation of Rs. 2,00,000/- for loss of earnings, Rs. 50,000/- for mental pain and suffering and Rs. 25,000/- for loss of company was asked for. Thus, the total compensation claimed was Rs. 2,75,000/-.

5. The respondent-driver Kanhaiyalal filed his separate reply to the claim application, in which he alleged that Biharilal Yadav and Krishna Narayan Dixit prevailed upon him to take the vehicle and themselves to Indore from Jhabua by representing that they had been permitted to take the vehicle to Indore. He further alleged that both Biharilal Yadav and Krishna Narayan Dixit were drunk and while he was driving the jeep, they fell on him, because of which he lost control of the vehicle and the jeep met with an accident. He further alleged that the brakes of the vehicle failed suddenly and the accident was an act of God and was not due to any negligence on his part. The appellants before us, State of M.P. and the Superintendent of Police, Indore filed a common reply to the claim application. It was alleged in the reply that Biharilal Yadav and Krishna Narayan Dixit were not given permission to travel in the jeep and deceased Krishna Narayan Dixit had not even taken permission to leave his headquarters at Jhabua. It was further alleged that even the driver of the vehicle was not permitted to take the jeep to Indore. On these grounds it was contended in the reply that the State was not responsible for payment of any compensation because the acts of the driver and the victims of the accident were unauthorised. It is further alleged that as per the version of the driver Kanhaiyalal, Biharilal Yadav and Krishna Narayan Dixit were drunk and as they fell on the driver, the accident took place because of the negligence of the victims themselves and, therefore, the claim petitions deserve to be rejected.

6. On the aforesaid pleadings, the learned Member of the Motor Accidents Claims Tribunal, Jhabua framed issues and after recording evidence awarded Rs. 1,08,000/-with interest and costs to the heirs of Biharilal Yadav and Rs. 1,20,000/-with interest and costs to the heirs of Krishna Narayan Dixit. The State has preferred this appeal against the award. As already stated the two appeals arising out of both these claim cases have been heard and are being decided together.

7. Mr. C.L. Yadav, learned Government Advocate for the appellants, submitted that since the victims were travelling in the jeep as unauthorised passengers and as they themselves had compelled the driver of the vehicle to unauthorisedly take away the vehicle and as the accident was also caused due to the victims themselves falling on the driver and causing the accident, the appeals deserve to be allowed and no compensation was payable to the claimants. He also submitted

that in any case, the amount of compensation awarded is exorbitant and deserves to be reduced to a large extent. Mr. Sujan Jain, learned counsel for the respondents, on the other hand, contended that the State was vicariously liable for the negligent acts of its servant. He also supported the award on the point of quantum of compensation.

8. It is not disputed that the jeep met with an accident, that respondent Kanhaiyalal was driving it and that victims Biharilal Yadav and Krishna Narayan Dixit were travelling in the jeep. It is also not disputed that Biharilal Yadav and Krishna Narayan Dixit died on the spot as a result of this accident. It was, however, contended that the jeep was not being driven rashly and negligently. The evidence on this point is that of Manoharlal, AW 3 and Ashok Kumar, AW 6. They have deposed to the effect that they had seen the jeep immediately before the accident, being driven in a rash and negligent manner. They reached the spot immediately after the accident. The learned Member of the Tribunal has rightly relied on their testimonies. In any case, in view of the judgments of the Supreme Court in Rajasthan State Road Transport Corporation v. Narain Shanker 1980 ACJ 411 (SC) and N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC), the doctrine of *res ipsa loquitur* would be applicable to the case looking to the nature of the accident and the surrounding circumstances. In the latter case, the Supreme Court has observed that Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We have, therefore, no doubt that the driver of the jeep was responsible for the accident, which was caused due to his rash and negligent driving. It is also noteworthy that the earlier story put forward by the driver of the vehicle that Biharilal Yadav and Krishna Narayan Dixit fought with each other in a drunken state and fell due to loss of balance on the driver as a result of which the driver lost his control over the vehicle and the accident occurred was abandoned and by amendment it was tried to be suggested that brakes of the vehicle suddenly failed and the accident took place because of this. The reason for the accident suggested earlier by the driver does not appear to be plausible and the later

suggestion that the accident occurred because of failure of brakes clearly seems to be an afterthought.

9. The next question which was argued before us was relating to the unauthorised driving of the jeep by the respondent Kanhaiyalal and that of the victims being unauthorised passengers, no compensation could be claimed for their deaths. The learned Member of the Tribunal found that the driver, Kanhaiyalal, was returning from Jhabua to Indore without taking permission from his superiors and the victims Biharilal Yadav and Krishna Narayan Dixit were travelling in the jeep without permission of the Government. However, relying on the decision of the Supreme Court in *Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt* 1966 ACJ 89 (SC), the learned Tribunal drew an inference that whenever a driver drives a vehicle entrusted to him, it would be deemed that he is driving it for his employer unless it is shown to the contrary. The Tribunal has also placed reliance on the decision of the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343 (SC), wherein it has been laid down that the owner is vicariously liable for the act of his driver. Taking into consideration the circumstances of the case, the Tribunal has found that the State Government was responsible for the acts of the driver, Kanhaiyalal. On the point of the victims being unauthorised passengers, the learned Tribunal has relied on the decision reported in *Mannalal v. State of M.P* 1986 ACJ 902 (MP), wherein it is decided that even if a driver allows passengers to travel in the vehicle and takes fare from them, in case of accident and injuries to such passengers, even the owner of the vehicle is responsible. Mr. Sujan Jain, learned counsel for the claimants in this case, has placed reliance on one more decision reported in *MS. Rayta v. Gowrawwa Channabasappa* 1987 ACJ 846 (Karnataka). It is a Division Bench ruling of the Karnataka High Court, wherein it has been held that a driver of military goods vehicle who took fare from the passengers on the way in violation of departmental instructions would also make his employer liable to such fare-paying passengers in the truck in case of an accident. We are, therefore, of the opinion that the Tribunal has held the appellants and respondent No. 6 responsible for payment of compensation to the legal representatives of the victims rightly on proper appreciation of evidence.

10. The next question relates to quantum of compensation. The learned Member of the Tribunal has come to the conclusion that the travelling allowance paid to deceased Biharilal Yadav could not be included in his salary and thus Biharilal's income has been taken to be Rs. 1,000/- per month, out of which it has been assumed that he would be spending Rs. 250/- on himself and the balance of Rs. 750/- he would have been spending on his family. Thus, the loss of earnings has been arrived at Rs. 9,000/- per year. The Tribunal has on proper appreciation of evidence taken Biharilal's age to be about 43 years at the time of his death. He had 14-15 years more of Government service. On overall assessment of the situation, the Tribunal applied multiplier of 12 and assessed the compensation at Rs. 1,08,000/-. The Tribunal has taken guidelines from several judgments in this respect. We do not find the assessment of compensation to be excessive. In fact, it has been fixed at a lower amount.

11. As regards deceased Krishna Narayan Dixit the Tribunal has assessed his income at Rs. 1,100/- per month. Out of this, he was assumed to have been spending Rs. 250/- on his own and the balance of Rs. 850/- was taken to be spent on the family. It is on this calculation that the annual income of deceased Krishna Narayan Dixit has been assessed at Rs. 10,000/-. Deceased Krishna Narayan Dixit was 43 years of age and the Tribunal has assessed the dependency of his sons and daughters at 4-5 years only and his widow being in service and earning Rs. 800/-per month also has been held to be not completely dependent on the deceased. On the overall consideration of the circumstances, the Tribunal has adopted a multiplier of 12 in this case also and on that basis compensation of Rs. 1,20,000/- has been awarded. Reliance has been placed on the several rulings quoted in the award in this respect also. We do not find the amount of compensation to be excessive and we are in perfect agreement with the learned Tribunal on this count.

12. In the result, the appeals fail and are hereby dismissed with no order as to costs. The balance of compensation, if not already deposited in the court, be paid to the claimants within two months from the date of this judgment, if the amount is already deposited in the court, it be allowed to be withdrawn by the claimants after making application to the Tribunal.

