

Padmabai and ors. Vs. Madhya Pradesh State Road Trans. Corpn. and anr.

Padmabai and ors. Vs. Madhya Pradesh State Road Trans. Corpn. and anr.

SooperKanoon Citation : sooperkanoon.com/510079

Court : Madhya Pradesh

Decided On : May-04-1999

Reported in : II(1999)ACC281; 2001ACJ785

Judge : B.A. Khan and ;Shambhoo Singh, JJ.

Appeal No. : M.A. No. 338 of 1994

Appellant : Padmabai and ors.

Respondent : Madhya Pradesh State Road Trans. Corpn. and anr.

Advocate for Def. : Kemkar, Adv.

Advocate for Pet/Ap. : A.S. Kutumble, Adv.

Disposition : Appeal dismissed

Judgement :

Shambhoo Singh, J.

1. This appeal has been filed by the claimants against the award dated 28.4.94 passed by Additional Motor Accidents Claims Tribunal, Mandleshwar (West Nimar) in Claim Case No. 55 of 1992 whereby compensation of Rs. 25,000 was awarded to the appellants.

2. The facts of the case, in brief, are that on 21.4.1991 respondent No. 2 was driving bus No. MP-09-4007, belonging to respondent No. 1 and was going to Balsamund Radheshyam, 'A' class contractor, son of appellant No. 1 and brother of appellant Nos. 2 and 3, was coming from opposite side on his motor cycle. There was accident, as a result of which Radheshyam died. The case of the appellants was that the respondent No. 2 drove the bus in rash and negligent manner and caused the accident and as a result of which the deceased died. The appellants filed Claim Case No. 55 of 1992 seeking compensation of Rs. 2,00,000. The respondents resisted the claim and averred that the deceased was driving his motor cycle in rash and negligent manner at very high speed and he dashed it against the bus of the respondent No. 1 which was stationed on the left side of the road and, therefore, they were not liable to pay compensation. The Tribunal after appreciation of evidence held that the appellants failed to prove that the accident occurred due to rash and negligent driving of the bus by respondent No. 2. However, it awarded compensation of Rs. 25,000 under no fault liability. Hence, this appeal.

3. Mr. Kutumble, learned counsel for the appellants, submitted that the Tribunal fell in error in finding that the appellants failed to prove rashness and negligence of respondent No. 2. He contended that the Tribunal ought to have applied the doctrine of *res ipsa loquitur*. He, therefore, prays for setting aside the impugned award and grant of compensation. On the other hand, Mr. Kemkar, learned counsel for the respondents, supported the award and submitted that the respondents have established by leading evidence that the accident occurred not due to rash and negligent driving of the respondent No. 2.

4. We considered the arguments advanced by counsel for both sides and perused the record. The argument of learned counsel for the appellants that on the basis of the maxim *res ipsa loquitur*, it must be held that the accident occurred due to rash and negligent driving of the bus, is not acceptable. Normally, the burden of proving negligence is on the claimants but in some cases it is very difficult for them to prove it as cause of accident is not known to them, it is solely within the knowledge of the driver who was driving the vehicle at the time of accident. This hardship is sought to be avoided by applying the maxim *res ipsa loquitur* which means that the

accident tells its own story and under such circumstances, on proving that the deceased died as a result of motor accident, the burden shifts on the respondent to prove that the accident did not happen due to his own negligence. Their Lordships of the Supreme Court in the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Company 1977 ACJ 343 (SC), observed:

The normal rule is that 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. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.

xxx xxx xxxWhere the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that car was under the management of the defendant and that the accident is such as in the ordinary course of things does not happen if those who had the management used proper care.

Now we shall examine the evidence as to whether the requirement of the principle of *res ipsa loquitur* has been satisfied. It has come in the evidence of Narayan, CW 2, that on hearing that accident had occurred by the bus of M.P.S.R.T.C, he came on the spot, he saw that one man was lying in front of the passenger bus No. MP-09-4007, blood was coming from his ear and mouth and his motor cycle was entangled in the bus. He further stated that the passenger bus was stationed at wrong side. It is, therefore, proved that the accident was caused by the bus wherein the deceased had sustained injuries and ultimately died. Under such circumstances, the burden shifted on the respondents to prove that the driver of

the bus was not responsible for the accident. The respondents discharged their burden by examining Jagdish, NAW 1, the driver of the offending vehicle. He deposed that he was coming from Kasra-wad driving bus No. MP-09-4007. Near Balsamund the deceased came from opposite direction, driving motor cycle rashly and negligently. He, seeing the motor cycle coming at a very high speed, took his bus to his left side and stopped it but the motor-cyclist could not control his motor cycle and dashed it against the stationed bus and fell down from the motor cycle and sustained injuries. Jagdish was cross-examined by the appellants but nothing could be elicited. Under such circumstances, in our opinion, the respondents proved that the accident did not occur due to rash and negligent driving of the bus by ' the respondent driver. Under such circumstances, the Tribunal rightly held that the accident did not occur due to rash and negligent driving of the bus and did not grant fault compensation.

In the result, the appeal is dismissed, no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com