Municipal Corporation Etc. Vs. Pushpa Chopra Etc.

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Court : Delhi

Decided On : Oct-28-1971

Reported in : 1972RLR53

Judge : M.R.A. Ansari, J.

Acts : Motor Vehicles Act, 1940 - Sections 110A

Appeal No. : First Appeal Nos. 192 and 827D of 1964

Appellant : Municipal Corporation Etc.; Pushpa Chopra

Respondent : Pushpa Chopra Etc.; Municipal Corporation Etc.

Advocate for Pet/Ap. : D. Chaudhary and; D.N. Bhasin, Advs

Judgement :

M.R.A. Ansari

(1) The deceased was an Accountant in the W.H.O. He was driving a scooter and met with an accident with a bus owned by M.C.D. resulting in his death. The claimants filed compensation for Rs. 3 lakhs. The Tribunal awarded to them 65,000.00 Both the parties appealed to the High Court. High Court went into the question of contributory negligence and reduced the amount to Rs. 50,000.00.

(2) Even apart from the oral evidence adduced on behalf of the petitioners, the admitted facts prove the negligence of the driver of the bus. The accident occurred

at the junction of Road No. 5 and Military Road. A duty is cast upon the driver of the motor vehicle, while approaching an intersection to slow down the speed of the vehicle sufficiently and to take other precautions to see that he does not coillide with any other Vehicle coming out of other road. One of the witnesses for the respondents namely RW-4 has admitted in his evidence that the scooter of the deceased had already taken a turn before the accident occvred. thereforee, the driver of the bus must have seen the deceased before he crossed the inter-section. If he was coming at a slow speed and if he had applied the brakes on seeing the deceased coming in front of his bus, then the bus should have stopped immediately and the accident should have been avoided. The fact that the bus not only did not stop immediately but even after striking against the scooter dragged it to a distance of about 15 feet shows that the vehicle was not coming at a slow speed. This, thereforee, is a case where the driver of the bus, by exercise of ordinary prudence and by the observance of the traffic rules, could have avoided the accident. That he did not avoid the accident proves that he was guilty of culpable negligence.

(3) But at the same time, I cannot agree with the finding of the learned Tribunal on Issue No. 3 that the deceased was not guilty of any contributory negligence. Just as a duty was cast upon the driver of the bus to observe traffic rules, while approaching a road inter-section to slow down the speed of the vehicle sufficiently to avoid an accident, a duty is cast also upon the deceased to take similar precautions, He was also approaching an inter-section and it was his duty to cross the inter-section only after satisfying himself that he could do so in safety for himself as well as for other persons using the road. When the deceased approached the inter-section. he must have seen the bus coming from the Military Road and if according to Pws 7, 9 and 10 the bus was coming at a high speed the deceased ought to have allowed the bus to pass the inter-section before he himself crossed it. After the accident, the deceased was found to be in possession of two cinema tickets for the show starting at 6.30 P.M. The accident occurred at about 6.30 P M. and, thereforee, it is obvious that the deceased was in a hurry to reach the cinema theater, before the show started. The fact, that there were two tickets with him further shows that the other ticket was meant for some one else who would probably be waiting for the deceased at the cinema theatre. It is,

thereforee, obvious that the deceased crossed the irter-section without taking sufficient precautions and was to a certain extent also responsible for the accident.

(4) The next question for consideration is what is the amount of compensation to which the legal heirs of the deceased would be entitled. The deceased was drawing a Salary of Rs. 780.00 per month. Out of this amount the personal expenses of the deceased have been estimated by the learned Tribunal at Rs 300.00 per month and the amount which would be available to his dependents for their maintainance at Rs. 480.00 per month or roughly Rs. 500.00 per month. The deceased was aged about 39 years at the time of his death and the life expectancy of the deceased has been fixed by the learned Tribunal at 55 years. thereforee, the life expectancy was cut short by 16 years. The pecuniary loss sustained by the petititioners as a result of the untimely death of the deceased has thus been determined at Rs. 96,000.00. Out of this amount tbelearnedTribunalhasdeductedRs.ll,367.00 representing the income tax which the deceased would have paid on his income for this period, Rs. 10,000.00 representing the amount for which the deceased had insured his life, Rs. 12,000.00 representing the provident fund payable to the deceased, and Rs. 10,000.00 by way of consideration for receiving the compensation in a lump sum.

(5) After deducting the above amounts, the learned Tribunal had awarded a net amount of Rs. 65,000.00 to the petitioner as compensation. The learned counsel for the petitioners has produced a letter of the World Health Organisation to the effect that the salary of the deceased was free from income tax. thereforee, there is no justification for deducting a sum of Rs. 11,367.00 from the compensation payable to the petitioners. The learned counsel also contended that thelearned Tribunal was not justified in deducting Rs.10,000.00 for lump sum payment of the compensation to the petitioners. In support of this contention he cited the decision in the case of M/S Prem Singh & others V. Tika Ram & other 1967 A.C.J. 243, in which it was held that the advantage derived by receiving the compensation in a lamp sum is offset by the rise in the cost of living. I am in respectful agreement with the view expressed in the above decision and, thereforee, this amount of Rs. 10,000.00 cannot also be deduted from the amount of compensation. The other deductions made by the learned Tribunal, will however, stand. thereforee, the total

pecuniary loss caused to the petitioners as a result of the untimely death of the deceased would amount to Rs. 74,000.00

(6) But a further deduction has to be made from this amount on account of the contributory negligence of the deceased. No guide lines are prescribed in the Act itself or in the Rules framed there under for the determination of the compensation payable to a person injured in a motor accident or to the legal heirs of the person who has met with his death in a motor accident. Section 110-B of the Act merely empowers the Claims Tribunal to make an award deter mining the amount of compensation which appears to it to be Just' in the case of lshwari Devi and others V. Union of India and others 1961 Acj 141, Dn. Bench of this court has held that the word 'Just' appearing in section 11 Ob of the Act has a wider ambit than the words used in Sections 1 (A) and 2 of the Fatal Accident Act and the claims Tribunal will apply the principles laid down in the decisions under the Fatal Accidents Act if they in the opinion of the Tribunal would serve as a proper measure of what is just compensation in the facts and circumstances of the case in hand. thereforee, in determining what is just compensation, the principles that apply to cases under the General law of torts may also be taken into consideration. In England, contributory negligence has always been held to be a relevant factor for the determination of the amount of compensation. Winfield in his law of torts has observe 1 that the rule of contributory negligence which was in force at the beginning of the 19th century was to the effect that 'if the plaintiff s injuries have been caused purely by the negligence of the defendant and partly by his own negligence, then at common law the plaintiff can recover nothing. 'This rule underwent a change in the middle of the 20th century and the rule then in force has been expressed thus by Viscount Birkenhead L.C. in 1922 1 Ac144' On the whole I think that the question for contributory negligence must be dealt with some what broadly and upon common-sense principles as a jury would broadly deal with it. And while no doubt, where a clear line can be drawn, the subsequent negligence is the, only one to look to, there are cases in which the two acts come so closely together, and second act of negligence is so much mixed up with the state of things brought about by the first Act, that the party secondly negligent, while not held free from blame might, on the other hand invoke the prior negligence is being part of the cause of the collusion so as to make it a case of

contribution,' The law in England was crystallised in the law Reform (Contributory Negligence) Act, 1945, section 1 of which provided as follows.:

'WHEREany person suffers damage as';the result partly of his own fault and partly by of the fault of any other person or persons, a claim in respect of the damage shall not be defeated by reason of fault of the person suffering the damage, but damages recoverable in respect thereof shall be reduced to such extent as the court thinks and equitable having regard to the claim ants share in respect of the damage.'

The rule of contibutory negligence has also been recognised in courts in India and reference may be made to a decision of the Madhya Pradesh High Court in Manjula Devi Bhuta V. Manjusri Raha reported in 1968 Ac 1.

(7) In the present case, I would put the contributors negligence of the deceased at 1/3rd and the negligence of the driver of the bus at 2/3rd. thereforee the amount of compensation payable to the petitioners had to be reduced by 1/3rd. The net compensation amount to which the petitioners are entitled is thus determined at Rs. 50,000.00. The amount of compensation, awarded by learned lower court is, thereforee, reduced to Rs. 50,000.00. In the result the appeal filed by the respondents i. e. Fao 192-D of 1964 is partly allowed and the appeal filed by the petitioner Fao 227-D/64 is dismissed.