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Kamlesh Kumar Vs. Prahlad

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Court : Rajasthan

Decided On : Jan-08-1985

Reported in : 1985(2)WLN422

Judge : Shyam Sunder Byas, J.

Appeal No. : S.B. Civil Misc. Appeal No. 43 of 1978

Appellant : Kamlesh Kumar

Respondent : Prahlad

Advocate for Pet/Ap. : Mr. N.P. Gupta

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. Since these two appeals under Section 110-D of the Motor Vehicles Act, 1939 are directed against one and the same award of the Claims Tribunal, Udaipur dated January 21, 1978, they were, heard together and are decided by a single judgment. By the award aforesaid, the Tribunal dismissed the claims of the appellants. One of the appeals has been filed by the injured while the other has been filed by the legal representatives of the deceased-victim.

2. Recapitulated briefly, the relevant facts giving rise to these appeals are that the appellant Govindsingh and his brother-in-law (sister's husband) Purshottam Lal were going on a scooter from Udaipur to Nathdwara on June 15, 1975. Govindsingh was driving the scooter while Purshottam Lal was sitting on the pillion. When the scooter reached near Mazera bus stand where there is a sharp steep curve, the R.S.R.T.C. bus R.S.M. 7465 came with a terrific speed from the opposite direction. Seeing the bus, Govindsingh took the scooter in the left side on the Kachcha portion. Respondent Prahlad was driving the bus. He could not control the bus and the bus dashed against the scooter. Govindsingh fell down. He sustained some injuries. The impact of the collusion was so forceful that Purshottam Lal was thrown away at some distance. He sustained multiple injuries and got badly injured. The bus stopped a few yards away. Some of the passengers got down from the bus and put Purshottam Lal in it. Govindsingh also boarded the bus. The bus was taken to General Hospital, Udaipur, where the doctor on duty declared Purshottam Lal dead. The injuries of Govindsingh were also examined. It was alleged that the accident had taken place due to the rash and negligent driving of the bus by its driver Prahlad. The deceased Purshottam Lal was serving as a Head Cashier in Punjab National Bank, Udaipur. His monthly income was nearly Rs. 1700/-. He was the sole bread-earner in his family, Purshottam Lal was a middle aged man of 49 years in age with sound physique and perfect health. Normally he would have remained alive-for upto age of 75 years. Govindsingh presented a claim for the recovery of a sum of Rs. 6300/- as compensation while the legal representatives of deceased Purshottam Lal (who are his widow, son and daughters) claimed a sum of Rs. 2,50,000/- as compensation. The claims petitions were cntested by the driver as well as the Rajasthan State Road Transport Corporation. It was admitted by them that a collision had taken place between the scooter and the bus, but it was denied that the collision took place on account of rash and negligent driving of the bus by its driver. It was alleged that there is a sharp steep curve at the place of occurrence. The bus was negotiating the curve on the height while the scooter was coming down on the slope. The scooter was behind a private bus which was also coming-from Udaipur and was proceeding towards Nathdwara. The driver of the scooter made an attempt to overtake the bus. In that attempt, when he over-took the bus

and proceeded further, he could not keep the balance and the scooter dashed against the bus. Thus the collision had taken place due to rash and negligent driving of the scooter by its driver Govindsingh. The quantum of compensation was also challenged. Both the claim petitions were consolidated for hearing. The Tribunal framed the following issues:

(1) Whether on June 15, 1975, non-petitioner No. 1 (Prahlad) while driving bus No. R.S.M. 7465 rashly and negligently, dashed it against scooter No. R.J.Z. 6564 and as a result of which the driver of the scooter and the pillion rider Govindsingh and Purshottam Lai respectively, sustained injuries and Purshottam Lal died thereby ?

(2) Whether the petitioners are entitled to recover compensation and if so, from whom and of what amount ?

(3) What will be the relief?

3. Both the parties adduced evidence before the Tribunal. On the conclusion of hearing, the Tribunal recorded its findings as under:

(1) the accident had taken place due to rash and negligent driving of the scooter by its driver Govindsingh. The driver of the bus was not responsible for this mishap, and

(2) in case the compensation was to be allowed. Govindsingh was entitled to recover a sum of Rs. 300/- while the legal representatives of Purshottam Lal deceased were entitled to recover a sum of Rs. 60,000/- as compensation.

4. Since issue No. 1 was answered against the claimants, the claims were dismissed with costs. Aggrieved against the said award, the claimants have come-up in appeal.

5. It may be said at the very out-set before proceeding further that the quantum of compensation assessed by the Tribunal was not challenged before me in these appeals by any of the parties. As such, the question of adequacy of the compensation need not be gone into and decided. In case the appeals are allowed and it is held that the accident had taken place due to the rash and negligent

driving of the bus by its driver Prahlad, the claimants are entitled to recover compensation as assessed by the Tribunal.

6. The sole question before me in these appeal is whether the finding of the Tribunal on issue No. 1 that the accident had taken place due to the rash and negligent driving of the scooter by its driver Govindsingh (claimant) is incorrect and requires correction It was vehemently contended by Mr. N.P. Gupta, learned counsel for the appellants that the whole approach of the Tribunal was erroneous and unsustainable. It was argued that there is the direct testimony of the claimant Govind Singh (AW 2) and AW 4 Khyali Lal, who have stated as to how the accident had taken place. AW 4 Khyali Lal was travelling in the bus of the Corporation. He was an independent witness not interested in either party. The Tribunal crept into an error in discarding his direct testimony. It was also argued that AW 2 Govindsingh was driving the scooter. His testimony was also wrongly disbelieved. When the site inspection was made, the scooter was found on the left extreme margin in the Kachcha portion of the road. The road, where the accident took place, was a National Highway nearly 20 feet wide. Since the accident had taken place on the extreme left side, it should be inferred that it had taken place due to the faulty driving of the bus by its driver Prahlad. It was also argued that the whole story of the scooter overtaking the bus was concocted and after-thought. The Tribunal gave undue importance to the testimony of NAW 2 Khubilal.

7. In reply, the finding on issue No. 1 was supported and it was argued that the accident had not taken place on the left side of the road as alleged by the claimants. The accident had taken place on the left side of the bus. There was a deep khud on the left side of the road where the bus was running. The driver could not take it further on the left side. The scooter, while coming down on the slope, could not be controlled by its driver. It, thus, dashed against the right side of the bus. The right side glass of the bus got broken. The scooter was not much damaged and the driver of the scooter got slightly injured. The bus, at the time of the accident, was on the correct side (left side) of the road. When the site was inspected by the police, blood was also found on the left side where the bus was running. That shows that the accident had taken place on that spot. Since the scooter was on the tarred portion of the road, it was removed and placed in the

Kaccha portion by the passengers of the bus for its safety. It was also argued that the Tribunal had properly scrutinized the evidence of the parties and the question of rash and negligent driving was a question of fact. The finding of the Tribunal on the question of fact should not be lightly interfered with. I have taken the respective submissions into consideration.

8. In order to succeed in an action for compensation, the first essential requirement to be established and proved by the claimant is that the injury or death had occurred due to rash and negligent act of the driver in driving the motor vehicle. There is no legal presumption of negligence or rashness. It is for the claimant to prove actionable evidence. There should be reason and acceptable evidence of negligence or rashness. Thus, proof of negligence or rashness is necessary before the driver and/or owner of motor vehicle is held liable for payment of compensation. Thus burden is on the claimants. It is also a settled position in law that negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Thus, negligence signifies want of proper care i.e. absence of taking care demanded by circumstances in a given situation. Rashness, on the other hand, indicates the comission of a careless act. Negligence or rashness in most of the cases is an inference to be drawn from proved facts. It may also be said that the driver of motor vehicle is required to keep a proper look-out on the road for other users of the road. It is also the duty of the driver of a motor vehicle to exercise due care and caution in driving the vehicle and to control it when situation demands so. The mere fact that a fatal accident had taken place is not by itself sufficient to make the driver liable and to infer that it had taken place due to the rash and negligent driving of the motor vehicle by its driver.

9. Let us now turn to the case in hand. The claimants have examined two witnesses viz., AW 2 Govind Singh and AW 4 Khyali Lal. While reading the evidence of these two witnesses and also of the witnesses examined by the respondents, the topography of the place of accident will have to be kept in mind. AW 7 Kuljeetsingh the then SHO, Police Station, Delwara-visited the spot on the very day of occurrence & prepared site plan Ex. 7. He was called in evidence by

the claimants. In Ex. 7 blood was found at places shown by marks '2' and '3'. Broken pieces of glass (red and white in colour) were found at place shown by mark '4'. The scooter was found in the Kachcha portion shown by mark '1'. No tyre-marks of bus were fonnd on the Kachcha portion of the road where the scooter was found lying at place '1' in Ex. 7. It may have to be rememberd that the road is a National Highway 20 feet wide. Site plan Ex. 7 further shows that there is a sharp curve. While going from Nathdwara to Udaipur, the curve is in height and while going from Udaipur towards Nathdwara, it is its slope.

10. Both the vehicles i.e. the scooter and the bus were mechanically examined on June 16, 1975 by the Police Head Constable Devilal (AW 6). His report is EX. 5. It shows that the glasses of the right side light and the right indicator of the bus were found broken and there were some marks of scratches on the bumper and front-show of the bus. Dent was found in both sides of the mud-guard and a crack in the sheet near the handle of the scooter. The claimant Govindsingh was medically examined in respect of his injuries by AW 1 Dr. G.L. Dad-the then Medical Jurist General Hospital, Udaipur. The examination was made on June 21, 1975 nearly a week after the accident. Dr. Dad found the following injuries on his body:

(1) Abrasion 1-1/2' x 1/6' with bruise 2' x 1/2' upper 1/3 of right forearm and swelling;

(2) Diffused swelling on right knee with abrasion 1/2' x 1/2' x bruise 3' x 1/2';

(3) Linear abrasion 1-1/2' x 1/6' right thigh;

(4) Abrasion 2 c.m. x 1/2 c.m. lower part of right upper arm.

11.The injuries were designated as simple. The injury report is Ex. 1. It is, thus, apparent that Govind Singh, who was driving the scooter at the crucial time of accident, had received very minor injuries.

12. Keeping the above facts in view, the testimony of AW 2 Govind Singh and AW 4 Khyali Lal may now be looked into. AW 2 Govindsingh stated that when he was negotiating the sharp curve while going from Udaipur to Nathdwara, he saw the roadways bus R.S.M. 7465 coming from the oppose direction at a fast speed. He

moved the scooter on his left side on the Kachcha portion of the National Highway, but the driver of the bus could not control it and the bus dashed against his scooter. The bus thereafter proceeded further. He fell down. He also found that the deceased Pursho-ttam Lal, who was sitting on the pillion had also fallen down and there were multiple injuries on his body. The bus stopped a few yards away. He and Purshottamlal were placed in that bus and were taken to General Hospital, Udaipur. In cross-examination, he admitted that it was the right side of the bumper of the bus which had dashed against his scooter. He had seen the bus coming from a distance of 20-25 feet. AW 4 Khyali Lal stated that he was travelling in the roadways bus which had caused the accident. The bus was running at a speed of 50-60 km/h. The bus dashed against the scooter coming from the opposite direction. He did not state that the scooter was on its left side while coming from Udaipur to Nathdwara. He admitted in cross-examination that he was sitting in the third row from the driver's seat, He further admitted that he did not notice the scooter before the accident. He simply saw the driver of the scooter and the pillion-rider lying on the ground. He further admitted that the driver of the bus refused to driver the bus after the accident and stated that he would not drive it till the arrival of police. The witness admitted that he and other persons persuaded the driver to take Govind Singh and Purshottam Lal to hospital. It was only thereafter on this persuasion that the driver of the bus drove the bus and took Govind Singh and Purshottam Lal to the hospital. He expressed his ignorance whether the bus had stopped at Mazera bus stand. When a pointed question was put to him in cross-examination whether he had seen some private bus coming from Udaipur and proceeding towards the opposite direction just before the accident, he again expressed his ignorance. He also expressed his inability to state whether the glass of the bus had broken or not in this accident.

13. Now, no reliance can be placed on these two witnesses for some apparent reasons. Site plane Ex. 7 shows that blood was found on place shown by mark '2' and broken pieces of glass were found on place shown by mark '4' in Ex. 7. These two points depicted by marks '2' and '4' in Ex. 7 show that they were on the extreme right edge of the road while coming from Udaipur to Nathdwara. The accident must have taken place on point '2' because blood was found there. This fact shows that the accident had taken place not on the left edge of the road as

stated by AW 2 Govind Singh and AW 4 Khyali Lal. This fact in itself is sufficient to show that these two witnesses have not stated truth and have concealed the true facts. AW 2 Govind Singh denied that he over took a private bus going ahead from Udaipur to Nathdwara and he therefore, could not see the roadways bus coming from the opposite direction and it was in these circumstances that his scooter dashed against the Corporation bus. But AW 4 Khyali Lal has expressed his ignorance and stated that whether a private bus passed at that time or not was not in his knowledge.

14. As against the evidence of the claimants, there is the direct evidence of the driver of the Corporation bus and Khubilal (NAW 2). The driver of the bus is NAW 1 Prahlad. Khubilal is the Assistant Public Prosecutor. Both of them stated that while the Corporation bus was negotiating the curve on height a private bus came from the opposite direction, i.e., Udaipur to Nathdwara. The driver of the roadways Corporation bus gave side to that private bus and took his bus on left edge of the road. Just behind the private bus, there was a scooter. The driver of the scooter by-passed the private bus and could not keep control over his scooter. The scooter thus came and dashed against the roadways corporation bus NAW 2 Khubi Lal is an independent person. He was travelling in the roadways bus RSM 7405, which NAW 1 Prahlad was driving. The learned Judge of the Tribunal put implicit faith on the testimony of NAW 2 Khubi Lal. On a careful scrutiny of what he stated. I am unable to take a view different from that taken by the learned Judge of the Tribunal. No cogent reasons have been canvassed before me by the learned counsel for the appellants as to why the direct testimony of NAW 2 Khubi Lal should not be accepted as true and as giving a true depiction of the incident.

15. As stated earlier, the claimant Govind Singh (AW 2) has sustained very minor injuries. If the Corporation bus was running at a terrific or fast speed, it was expected in the circumstances of the case that Govind Singh, who was driving the scooter, must have received severe injuries. The impact of the accident must have fallen first on him and not on the pillion-rider Puroshottam Lal.

16. The scooter was found at place shown by mark '1' in site plan Ex. 7 prepared by the police. It is true that this place, shown by mark '1' is on the Kachcha portion

and is on the left side while going from Udaipur to Nathdwara. But it has been explained by the driver of the Corporation bus and Khubi Lal (NAW 2) that after the accident had taken place, scooter was found on the road. Since nobody was there to look-after the scooter and both the injured persons were to be taken to the hospital at Udaipur, the passengers of the bus removed the scooter from the metalled portion of the road and put it on the extreme left margin of the road in the Kachcha portion so that it might not be disturbed by any body and the use of the road may not be blocked. Their explanation seems to be correct. Had the accident taken place at place shown by mark '1', as stated by AW 2 Govind Singh and AW 4 Khyali Lal, tyre marks of the Corportation bus must have been there on the Kachcha portion. But no tyre marks of the bus were found at place marked '1' in Ex. 7. That again shows that the accident had not taken place at place '1' as pleaded by the claimants.

17. It has been discussed above that when the scooter and the roadways corporation bus were mechanically inspected, the glass of the right side light was found broken and so also the right, side indicator was found damaged. Scratches were found on the bumper and the front-show-portion of the roadways bus. Only a dent was found on both the sides of the mud-guard of the scooter and crack was found in the sheet near the handle of the scooter. The damages sustained by the two vehicles show that the bus was damaged more than the scooter. It could be only when the bus was in the slow motion and the scooter was running at a high speed. Moreover, the place where the accident took place is a sharp steep curve. The bus was ascending while the scooter was coming down on the slope. It is in the knowledge of every body that when the bus negotiates a sharp curve on height, its speed remains slow. So also when a motor, vehicle runs down on the slope, its speed is generally high. These facts further show that the story of accident as delineated by the claimant Govind Singh (AW 2) and AW 4 Khyali Lal is not true and does not give a correct description of the accident.

18. Thus, on a careful scrutiny of the evidence of the parties and keeping the various circumstances appearing in the case in view, it cannot be said that the finding of the Tribunal on the question of rash and negligent driving is perverse or manifestly erroneous requiring any correction in appeals. The finding of the

Tribunal that the accident had taken place due to the rash and negligent driving of the scooter by its driver Govind Singh (AW 2) is correct.

19. Mr. Gupta tried to seek shelter under the doctrine 'RES IPSA LOQUITOR' and contended that the way in which the accident took place shows that it had taken place due to the negligence and rashness of the driver of the roadways bus Prahlad. I find no force in the contention. The doctrine of 'RES IPSA LOQUITOR' does not apply and cannot be pressed into service if the cause of accident is known. This doctrine applies where the facts before the Court are not the whole facts and the cause of accident has not been explained by any of the parties. Here in the instant case, the evidence adduced by the parties clearly shows that the accident had taken place due to the rash and negligent driving of the scooter by its driver Govind Singh. The contention raised by Mr. Gupta thus holds no ground.

20. Mr. Gupta contended that in regard to the claim of the legal representatives of the deceased Purshottam Lal, compensation should be allowed atleast to them as the accident was the result of composite negligence of the drivers of the scooter and the corporation bus. It was argued that when there is a case of composite negligence, compensation can be awarded against any of the two drivers. It was argued that Purshottam Lal was a pillion-rider who had not committed any act of rashness or negligence. The accident should therefore, be taken to be a result of the 'composite negligence' of the two drivers. I have given my thoughtful consideration to the contention raised and find it barren of substance. It is tru3 that where a person is injured without any negligence on his part, but as a combined effect of the negligence of two other persons, it is a case of what is known as 'composite negligence' in law. In such a case, compensation can be claimed from any of the drivers. The drivers of the two vehicles in a case of composite negligence are jointly and severally liable to pay compensation to the claimant.

21. Here in the instant case there are serious hurdles in the way of the legal representatives of the deceased Puroshttam Lal for claiming the compensation on the ground of composite negligence of the drivers of the scooter and bus. In the first place, no case of composite negligence has been pleaded in the claim petition by the legal representatives of deceased Purshottam Lal. The case based on

composite negligence was also not addressed and put before the Tribunal even at the time of final arguments. When the case of composite negligence was not pleaded and put in the Tribunal, it is difficult to allow such a case to be built-up in appeal. Apart from that, as discussed earlier, the accident took place due to the rash and negligent driving of the scooter by its driver Govind Singh. It has been held above that the driver of the Corporation bus was not at all negligent or rash in driving the bus. Thus, there is no case of composite negligence. The case of 'composite negligence' would have been there if the driver of the roadways Corporation bus was also found negligent and rash in driving the bus. But that is not the case here. There is, thus, no merit in the contention of Mr. Gupta that the accident was the result of composite negligence of the drivers of the scooter and bus.

22. No other contention was raised.

23. From what has been discussed above, I find no force in these appeals. The appeals of the claimants are consequently dismissed but with no order as to costs.

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