In Re: J.C. May

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Court : Chennai

Decided On : Dec-30-1957

Reported in : 1960CriLJ239

Judge : Ramaswami, J.

Appellant : In Re: J.C. May

Judgement :
ORDER

Ramaswami, J.

1. This Revision is sought to be filed against the conviction and sentence by the learned' Third Presidency Magistrate, Madras, in M. V. Case No. 901 of 1957.

2. The accused Mr. J. C, May who was driving his car MSZ. 6150 on 14-7-1957 at about 16-1Q hours collided against the car MSZ 5070 coining on -his right at the interSection of South Beach Road and Edward Elliots Road, Madras, which is near the Inspector-General of Police's Office.

3. The case for the prosecution as set out by P.W. 2 the driver of MSZ 5070 is; He was driving his car (Hudson) from Edward Elliots Road to St. Thomas Road. At the junction of the road there was the caution board prominently calling upon vehicles to stop, listen and proceed. P.W. 2 accordingly stopped on the Edward Elliots Road at the turning point within about 10 feet of the fountaui and looked up on

either side of the main road. MSZ. 6150 was coming at a distance of about 150 yards on P,5V, 2's left. As both sides were thus clear for him, F1W. 2 turned to his right and proceeded on the South Beach Road at a moderate speed. Then he heard a collision sound in his rear.

He stopped his car, got down and saw MSZ. 6150 had hit his car and had gone and stopped near the I. G. office gate. P.W. 2's right rear mudguard, bumper, dicky and rear lights had been damaged. In other, words, P.W. 2's case is that by reason of the accused driving at a speed and in a manner dangerous to the public, had brought about the collision and thereby the accused is guilty of driving recklessly or dangerously within the meaning of Section 116 of the Motor Vehicles Aeft IV of 1939 and Section 71 of the Madras City Police Act III of 1S88, which penalises any one who drives any vehicle in a rash or negligent manner in any public place.

4. The case for the accused was that finding that P.W. 2 had stopped his vehicle suddenly and unexpectedly, he (accused) applied his brakes but could not avoid colliding and that therefore this is nothing more than an inevitable accident and an error of judgment not punishable Under Section 116 of the M. V. Act or Section 71 of the Madras City Police Act.

5. The learned Magistrate came to the conclusion that the version of P.W. 2 was acceptable and convicted the accused as charged and sentenced him to pay a fine of Rs. 40. Hence this Revision.

6. Section 116 of the Motor Vehicles Act corresponds to Section 5 of Act VIII of 1914 which ran as follows :

Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place ....

It may be noted that words 'in a public place recklessly or negligently or' have been omitted in he new Act. The old Section had not however specified the definition of reckless and negligent driving and it was left to the case-law on the subject to define their limits.

7. Culpable driving of a motor vehicle giving rise to penalties on the criminal side and damages on the civil side may he classified as negligent driving, rash driving and guilty errors of judgment. Of these three classes, the first two constitute the component elements of reckless or dangerous driving punishable Under Section 116 of the M. V. Act. Section 71 of the City Police Act postulates the rash or negligent driving in any publics place as the requisites for an offence to be committed under that Section. Errors of judgment which fall within that clause give rise to civil liability but are. not punishable criminally. Gour's Penal Law 5th edition p. 1047 quoted with approval in Cheriyan v. Sirkar Prosecutor ; In re, Ganesan : AIR1950 Mad71 , In re, Appayya, 1956 Andh W.R. 784 : A.I.R. 1957 Andh-Pra. 100; Gulam Saeed Gulam Amir v. The State A.I.R. 1954 Madh-Bha 41; Chammanlalv. State : AIR1954 All186 ; S.V. Subba Rao v. State A.I.R. 1953 Hyd. 123.

8. The two ingredients of an offence Under Section 116 of the M. V. Act are (a) speed and (b) driving in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which is actually at the time or which might reasonably be expected to be in the place.

9. Turning to speed, both as regards civil and criminal liability, the rate of speed which will be considered dangerous varies with the nature, conditions and use of the particular highway and the amount of traffic which actually is, or may be expected to be on it. The driver of a vehicle must drive at a speed that will permit of his stopping or deflecting his course within the limits of his vi-sion, and if he strikes a person or object without seeing that person or object, he may in the circums-'tances be placed in the dilemma that either he was not keeping a sufficient look out or, if he was keeping a look out, he was driving too fast in view of the look out that could be kept.

It is the duty of the driver to drive his vehicle at a speed which will not imperil the safety of others using the road. Particularly at night it is1 his duty to drive at such a speed that he is able to stop within the range of visibility. (Halsbury'9 Laws of England Hailsham edition Vol. XXX p 639s Gibb: Collisions on land p. 1 and foil; UnderhiH: Law of Torts 15th edition p. 157; Clerk and Lind-i sell: Law of Torts p. 357; Chaudhri; Indian Motor Vehicles Act 3rd edition (1957) pp. 239-240; Gibb and MilHner: Trial of motor car accident cases, Third edition (Sweet and Maxwell) pp. 37-42).

10. The following remarks of Lord Greene, M. R., in Laurie v. Raglan Building Co. (1942) 1 K.B. 152 at p. 154 are apposite :

Despite all that can be said, it is speed the is the great begetter of accidents. It is in respect of speed, pre-eminently that the motor car is dis-tinguished from the horse vehicle. But for the speed at which motor cars can travel, the motorcar, which does not pit an independent will against the will of the driver, should be much safer than a horse vehicle. Yet road accidents have multiplied: beyond all reckoning since the motor car became common. It is the speed of the modern motor car which embroils and confuses the traffic and makes it more difficult to avoid accident. A person travelling at 40 miles per hour has less chance of avoiding accident than one going at 20 or, 30 miles per hour, because the guidance of a vehicle going at ai bichpr snepd cal's for rarer mialfh'es nf skill and j'udfmient than does the guidance of the slower vehicle.

And, moreover, the high speed is more likely to induce confusion and difficulty in other road users who while possibly less skilled, are not in any way negligent. It is to be hoped that the Courts will never lend countenance to the utterly fallacious argument of too many motoriste that speed is not dangerous.' It is dangerous, and in the legal sense it is negligence, in a very great number of cases. True, a clear line cannot be drawn, but. the truth of the statement just made will be obvious if the test of ability to avoid accident by pulling up or swerving be applied. For example, no car driven at 35 miles an hour can safely bo pulled up sharp on a greasy road, No car going at that fipeed can so safely swerve to avoid collision as one going at 25. It may swerve more e_asi ly, but certainly not so safely, because

the driver: has far less time to take in his surroundings. It has been plainly laid down, too, that when conditions are such that it is not safe to go at more than a foot pace a driver must go at a foot pace. If even that is unsafe, he must stop.

11. The question whether speed constitutes negligence has been the subject-matter of much study in the United States of America where practically every family owns an automobile. 5 American Jurisprudence at page 645 et. seq, has the following to say :

At common law there is no precise limit of speed. A driver must exercise ordinary care and drive his car at a reasonable rate of speed, and what is a reasonable rate of speed is dependent upon the circumstances of the ease, An excessive speed may, under, certain circumstances, constitute negligence at common law. Some circumstances rpay require a very slow speed if the charge of negligence is to be avoided. Another fundamental rule is that in order to impose liability the speed must have been the proximate cause of the injury ....Regulation of speed is now quite generally effected by statute or ordinance.... Driving an automobile at a greatly excessive rate of speed in violation of the statutes may constitute an net so wanton and reckless as to evince an utter disregard for the safety of others, and necessarily to imply an intent to injure, so as to constitute gross negligence....It is asserted as a general rule of law that it is negligence as a matter of law to drive an automobile at such a rate of speed that it cannot be stopped in time to avoid an obstruction discernible within the driver's length of visionl ahead of him....

Without denying that in many situations and under many conditions a driver of an automobile js as a matter of law guilty of negligence in driving at such a rate of speed as prevents stopping within time to avoid an obstruction within the range of vision, there is a strong tendency in the recent cases to refuse to adopt that as a universal formula or a hard and fast rule. Thus, it has been held to have no application in case of emergencies creating unexpected hazards. The rule does not apply to a case where an object or obstruction which the driver has no reason to expect appears suddenly immediately in front of his automobile....

12. I have just before mentioned that driving recklessly or dangerously is the result of two mental states viz., (a) neeligence and (b) rashness. Bingham in his Motor

Claims Cases, Second edition, at page 3 (Butterwor'th and Co.)(1951) has given the following definitions for negligence culled out from the standard authorities :

Negligence was defined in the well-known K case of Blyth v. Birmingham Waterworks Co. (1856) 11 Ry. 781 : 25 LJ Ex. 212 :4 WR 294; 36 Dig. 6 as follows.Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarilv regulate the conduct of human affairs, would do. or doing something which a prudent and reasonable man would not do.

The Law Revision Committee in 1939 (Cmd. 6032' adopted the following definition :

Negligence may be said to consist in a failure to exercise due care in a case in which a duty to take care exists.The general concept of reasonable foresight is th criterion of negligence and is fluid in its application; it has to be fitted to the facts of the parties lar case. Lord Wright in Bourhill v. Young (1943)

Negligence is not established by proving that the loss mignt possibly and with extraordinary foresight and prudence have been avoided. Rothschild v. Royal Mail Steam Packet Co. (851) 18 L.T. (O.S.) 334: Hart v. Lanshire and Yorkshire Rly. Co. (1869) 21 L.T. 261.

X X X X X XIf the possibility of danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of dunset emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions. Per Lord Dimedin in Pardon v. Harcourt Rivington (1932) 146 L.T. 391.

I am far from saying that every one is entitled to assume, in all circumstances, that other per-t sons will be careful. On the contrary a prudent man will guard against the possible negligence of others when experience shows such negligence to be common. Per Lord Du Parcq in Grant v Sun Shipping Co. (1948) A. C. 549. Both quoted in Upson's case. London Passanger Transport Board v. Upson. (1949) 1 All E.R. 60.

X X X X X XThere is a duty on the driver of a motor ear to observe ordinary care or skill towards persons using the highway whom he could reasonably foresee as likely to be affected.

13. In order to render a person liable for criminal negligence there must be something more than a mere negligence; for law distinguishes between negligence which originates a civil liability and one the consequence of which is a criminal prosecution. Brett, J., said 'there must be negligence so great as to satisfy a Jury that the offender had a wicked mind in the sense of being reckles or careless whether death occurred or not'. But negligence does not mean, even for criminal negligence, absolute carelessness cr indifference but want of such a degree of care as is required in particular _ circumstances. Simple lack of care asi will constitute civil liability is not enough. A very high degree of negligence is required to be proved before the felony is established and this may aptly be described by the epithet 'reckless' : R. v Bnteman 1925 94 LT K. B. 791; Reg v. Elliott (1887-90) Cox C.C. 710: (1874) 12 Cox C. C. 625; Hilton's case (1838) 2 Lewin 214 Rex v Dal-loway, (1846-48) 2 Cox C. C. 273; Emperor v W.S. Priestley A.I.R. 1944 Sind 124.

14. There is a clear distinction between negligence and 'rashness' and that distinction to contemplated even by See. 279 IPC In the case of negligence, the party does not do an act which he was bound to do, because he adverts not to it. iln the case of rashness, the party does an act and breaks a positive duty. He thinks of the probable mischief, but in consequence of a mfssuppositlor W.eoffp-n liv insufficient advertence, he assume' that the mischief will not ensue in the given ins tance or case. The radical idea denoted is alway this.

The party runs a risk of which he ji conscious. Even in ordinary parlance, 'negligence' connotes want of proper care and 'rashness' conveys the iidea of recklessness or the doing of an act without due consideration. Culpable rashness is often ex. plained as acting with 'the consciousness that dangerous consequences will follow3 but with the hope that they will not follow and with the belief that the actor has taken sufficient precautions to pro-vent the happening of such consequences. Similar-ly, culpable negligence is acting without the

consciousness that dangerous consequences will follow, but in the circumstances which show that the actor has not exercised the caution that was incumbent of him.

Criminal rashness is hazarding a dangerous or wantoa act with the knowledge that it is so and that it may cause injury, but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence : In re, Nidamarti Nagabhushanam, 7 Mad HCR 119; Empress of India v. Idu Beg, ILR 3 All 776; Smith H.W. v. Emperor : AIR1926 Cal300 Chotelal v. Emperor : AIR1945 All16 State of Bihar v. Mangal Singh : AIR1953 Pat56 ; Chammanlal v. State : AIR1954 All186 ; Emperor v. Abdul Latif A.I.R. 1944 Lah 163 : 45 Cr. L. J. 699. For a comprehensive discussion see V. B. Raju, T.C.S. Penal Code p. 916 and foil.

15. Bearing these principles in mind, if we examine the facts' of this case, we find that the accused has been rightly convicted Under Section 116 M. V. Act and Section 71 of the City Police Act. The accused has certainly been driving his car at a speed between 40 and 50 miles per hour. P.W. 1's Opinion is that on account of the 91 feet skid mark and the brake efficiency of the car MSZ 6150, being 75 per cent and 20 per cent the speed must have been 40 to 50 miles per hour, based on Fer-rodo Brake Testing Meter Rending Conversion table, is entitled to acceptance. Then the evidence of P.W. 2 rightly accented shows that he did not suddenly or unexpectedly stop his car inviting the collision.

P.W. 2 proceeded from the right side of the accused and the accused should not under the rules ' have taken the risk at the junction of the road. The accused had obviously decided that he could overtake P.W. 2 on the right. But for this purpose of overtaking he had neither blown his horn nor obtained a signal from P W. 2 to pass. Therefore, when the accused attempted to overtake P.W. 2 at a considerable speed he has hazarded hoping that nothing untoward would happen. (Therefore, this is not a mere error of judgment but collision was brought about by reckless and careless driving.

16. The conviction is therefore correct and the sentence is by no means excessive. Both are confirmed and this Revision is dismissed.