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M.C.D. Vs. Sureshi Devi

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Court : Delhi

Decided On : Feb-24-2012

Judge : G.P.Mittal

Appeal No. : MAC.APP. 479 of 2007

Appellant : M.C.D.

Respondent : Sureshi Devi

Judgement :

G.P. MITTAL, J.

1. The Appellant Municipal Corporation of Delhi impugns the judgment dated 10.01.2007 passed by the Motor Accident Claims Tribunal, (the Claims Tribunal) whereby a compensation of Rs.1,70,296/- was awarded for the death of Vinod Kumar Joshi who was aged about 23 years and a bachelor at the time of the accident, which occurred on 31.10.2001. No Cross Appeal/Cross Objections have been filed by the First Respondent.

2. The following contentions are raised on behalf of the Appellant:-

(i) The Claims Tribunal failed to record any finding on negligence, yet decided the issue of negligence against the Appellant; and

(ii) There was no proof of the deceased's income; his income was taken as per minimum wages of an unskilled worker but were increased by 50% towards the future prospects without any basis.

3. On the other hand, it is submitted on behalf of First Respondent that the negligence was duly proved from PW-2's testimony. The compensation awarded was very low.

4. On the issue of negligence, the Claims Tribunal held as under:-

"9. The factum of the accident is not disputed. The petitioner has claimed that it had occurred due to the negligence of respondent No.1, driver of the offending vehicle. Though, respondent No.1 has denied his negligence, it is admitted that a case of rash and negligent driving was instituted against him. It has been further been proved though the deposition of PW2 and the MLC/Medical record, that the deceased succumbed to his injuries on the spot.

Issue No.1 is, therefore, decided in favour of the petitioner."

5. A perusal of the impugned judgment shows that the Claims Tribunal returned the finding on the issue of negligence simply on the ground that the factum of accident was not disputed as a case for rash and negligent driving was instituted against the Appellant's driver. To say the least, the entire approach of the Claims Tribunal was against the basic principles of liability under the law of Torts.

6. There are cases where there is direct evidence on negligence. At the same time, there may be cases where negligence would be inferred against the driver of the vehicle from indirect or circumstantial evidence. The registration of a criminal case always depends upon the assessment and discretion of the Investigating Officer. If two vehicles are involved in an accident, the driver of one of them may be negligent or both of them may be negligent. Similarly, even in case of a pedestrian, he himself may be solely responsible or have contributed to the accident. Of late, some of the Claims Tribunal do not discuss the issue of negligence and hold the driver liable simply on account of registration of a criminal case against him. The registration of a criminal case, subject to certain exceptions,

may be taken as sufficient proof of involvement of the vehicle in the accident but not as a proof of the negligence.

7. ‘Negligence’ is failure to take proper care, a reasonable man would have done under the circumstances. There may be cases where an inference of negligence could be derived from the manner in which the accident takes place. For instance, where a motor vehicle goes up the pavement and strike against a pedestrian; or the tyre of a motor vehicle bursts, it loses control and collides against a pedestrian or the said vehicle turning turtle causing injuries to the passengers, or when a motor vehicle moving on a bridge collided against a railing and falls into a Canal. In such cases, the principles of strict liability as laid down in Rylands v. Fletcher [1861-73] All E.R. 1 would be applicable. The applicability of the principle of res ipsa loquitur was explained by the Supreme Court in Pushpabai Purshottam Udeshi and Ors. v. Ranjit Ginning and Pressing Co. (P) Ltd. and Anr. AIR 1977 SC 1735. It was observed that in certain situation there is hardship for the Plaintiff to prove the manner of the accident. In such cases applying the principles of “res ipsa”the onus to prove how the accident happened, would shift on the defendant. In Pushpabai Purshottam Udeshi and Ors.(supra) the Supreme Court observed:-

“6. 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. Salmond on the Law of Torts (15th Ed.) at p. 306 states : "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated

thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a negligence 'tells its own. story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where 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…….”

8. In Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr., 1977 (2) SCC 441; it was held that proof of negligence is essential before a person or his master can be held liable to pay the compensation. A plea was raised before the Supreme Court that use of a motor vehicle is enough to make the owner liable to pay the compensation. The contention was repelled and it was held as under:-

“23. The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English law. The relevant sections found in the three English Acts Road Traffic Act, 1930. the Third Parties (Rights against Insurers) Act, 1930 and "the Road Traffic Act, 1934 were incorporated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the person damaged or injured should be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff, and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car.

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27. This plea ignores the basic requirements of the owner's liability and the claimant’s right to receive compensation. The owners' liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results.

28. Section 110(1) of the Act empowers the State Government to constitute one or more Motor Accidents Claims Tribunals for such area as may be specified for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death or bodily injury to persons. The power is optional and the State Government may not constitute a Claims Tribunal for certain areas. When a claim includes a claim for compensation the claimant has an option to make his claim before the Civil Court. Regarding claims for compensation therefore in certain cases Civil Courts also have a jurisdiction. If the contention put forward is accepted so far as the Civil Court is concerned it would have to determine the liability of the owner on the basis of common law or torts while the Claims Tribunal can award compensation without reference to common law or torts and without coming to the conclusion that the owner is liable. The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable.

The proof of negligence remains the linch pin to recover compensation. The various enactments have attempted to mitigate a possible injury to the claimant by providing for payment of the claims by insurance.

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30. A person is not liable unless he contravenes any of the duties imposed on him by common law or by the statute. In the case of a motor accident the owner is only liable for negligence and on proof of vicarious liability for the acts of his servant The necessity to provide effective means for compensating the victims in motor accidents should not blind us in determining the state of law as it exists today."

9. In para 37 of the report, the Supreme Court referred to a Division Bench judgment of Madras High Court in M/s. Ruby Insurance Company Limited v. Govindaraj, AAO Nos. 607/1973 and 296/1974 delivered on 13.12.1976, where it was suggested to have social insurance to provide cover for the Claimants irrespective of proof of negligence.

10. In Oriental Insurance Company Limited v. Meena Variyal and Ors., (2007) 5 SCC 428, the three Judges Bench decision in Menu B. Mehta (supra) was relied. It was held that to claim compensation under Section 166 of the Motor Vehicle Act (the Act), the proof of negligence on the part of the driver of the vehicle was a sine qua non. The owner becomes vicariously liable for the act of his servant and the Insurer on account of the contract of insurance to indemnify the owner. It was observed that in a Petition under Section 163-A of the Act, negligence or default on the part of the owner or driver of the vehicle was not required to be proved. At the same time, it has to be kept in mind that proof of negligence as required in a Claim Petition under Section 166 of the Act, is not the same as in a criminal case i.e. "beyond reasonable doubt", but "the preponderance of probability".

11. In Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors., (2009) 13 SC 530, while holding that in a petition for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

12. The observations of the Supreme Court in Bimla Devi (supra) were referred with approval in later judgment in Parmeshwari Devi v. Amir Chand and Ors., (2011) 11 SCC 635.

13. After holding that negligence is required to be established in a Petition under Section 166 of the Act, it is the time to refer to the facts of this case.

14. In this case, the accident occurred while the deceased was travelling in a tempo bearing No.DL-1LA-5353. He was sitting in the rear portion of the tempo being employed as a conductor-cum-labourer. PW-2 Krishan Prasad deposed that when the vehicle reached near Minto Bridge, one dumper being driven at a very fast speed came from the side of ITO and hit against his tempo. It is not disputed that the accident took place on a road which was a two carriage way divided by a central verge. Since one of the carriage way was under repair, the same had been closed. The Appellant’s vehicle came on the other carriage way because of closure of the road. Obviously, the driver had no option when the road was closed but to come on the other carriage way, meant for the traffic coming from the opposite direction. A perusal of the certified copy of the site plan shows that dumper had suddenly changed the carriage way. It is important to note that the accident took place at 1:30 A.M. (in the dead of night). It was, therefore, expected of the Appellant’s driver to have taken extra precaution while coming to the carriage way meant for the traffic coming from the opposite direction.

15. PW-2 Krishan Prasad says that he was driving his vehicle at a very slow speed whereas dumper driven by the Appellant’s driver came at a very fast speed. This was disputed by the Appellant’s driver, who entered the witness box as RW-1. It is a case of oath against oath and since the Appellant’s driver suddenly came on the

carriage way, meant for the traffic coming from the opposite direction and the fact that a criminal case was registered against him against which the Appellant's driver did not make any representation would impel me to hold that the Respondent had proved that the accident was caused on account of rash and negligent driving on the part of the Appellant's driver.

16. As far as quantum of compensation is concerned, as stated earlier, the First Respondent has not filed any Appeal for enhancement of compensation. PW-2's testimony that Vinod Kumar Joshi was getting wages at the rate of Rs.100/- per day in addition of Rs.100/- for the night (whenever he worked at night) was not challenged in cross-examination. Thus, it can safely be assumed that the deceased's income must be between Rs.3,000/- to Rs.4,000/- per month. Even if, the deceased's monthly income is taken as Rs.3,000/- and if he spent 50% thereof towards his personal and living expenses, the loss of dependency on applying the multiplier of '11' (as per the age of the deceased's mother 55 years), comes to Rs.1,98,000/- (3,000/- x 1/2 x 12 x 11) i.e. more than what was arrived at by the Claims Tribunal.

17. Thus, it cannot be said that the compensation of Rs.1,70,296/- awarded by the Claims Tribunal was exorbitant or excessive.

18. The Appeal is devoid of any merit; the same is accordingly dismissed.

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