

Smt. Ishwar Devi Vs Reoti Raman and Another

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Nov. 30, 1977

Acts Referred: Fatal Accidents Act, 1855 " Section 1A
Motor Vehicles Act, 1939 " Section 110B, 3, 95

Citation: AIR 1978 All 306

Hon'ble Judges: T.S. Misra, J; Hari Swarup, J

Bench: Division Bench

Advocate: P.N. Mathur, for the Appellant; Bishun Singh, V. Singh and R.N. Trivedi, for the Respondent

Final Decision: Allowed

Judgement

T.S. Misra, J.

This appeal arises out of a fatal accident case. One Mahesh Vijai Singh left his house situate in Bazar Jhau Lal for Ghasiyari

Mandi, Lucknow on the night intervening 4th and 5th May, 1968 at about 9.40 P.M. He was going on foot. When he reached Kothi No. 16 on R.

K. Tandon Road, Lucknow in front of Kotwali, Qaiser-bagh, he was knocked down by motorcycle No. UPZ 2719 which was being driven by

Reoti Raman Rastogi. The injuries which he sustained proved to be fatal and he died after about four hours of the accident. He was survived by his

widow, a son and a daughter who were his dependents. Shrimati Ishwar Devi, his widow, was about 50 years old whereas his daughter Km.

Kumkum was 16 years old and his son Dinesh Kumar was 14 years old. Mahesh Vijai Singh, the deceased, was a licensed typist. He carried on

his profession in the premises of this Court at Lucknow and it was alleged that his monthly income therefrom was about Rs. 400 per month. Smt.

Ishwar Devi filed a claim of compensation for Rs. 50,000 u/s 110-A of the Motor Vehicles Act on 3rd July, 1968 before the Motor Accidents

Claims Tribunal, Lucknow.

2. This petition was contested by Reoti Raman and Oriental Fire and General Insurance Co. Ltd., the opposite parties 1 and 2 respectively. They

filed separate written statements. Reoti Raman pleaded inter alia that the widow of the deceased had not made other dependants as parties and

was not entitled to claim compensation on (behalf of them. He also pleaded that the accident in question did not take place because of his

negligence or rash driving; rather the deceased, who was walking on the footpath on the left side, suddenly changed his mind and tried to cross the

road when the motor-cycle of the contesting defendant Reoti Raman had come very close to him and in spite of applying brakes he could not avert

the accident. It was submitted that the compensation was highly exaggerated.

3. The Insurance Company pleaded that the motor-cycle No. UPZ 2719 was insured for the period 11th February, 1968 to 10th February, 1969

for one year with them and Reoti Raman had a learner's licence from August 1967 to October, 19-67 but had no licence whatsoever from

November 1967 till 9th May, 1968. He obtained a learner's licence from 10th May, 1968 to 9th August, 1968 and later on secured a permanent

licence of driving on 5th September, 1968. It was, therefore, contended that the Insurance Company was not liable for any claim or compensation

because Reoti Raman had no licence on the date of the accident.

4. The Tribunal held that on the facts established it could not be said that when the deceased turned towards the road there was sufficient distance

between him and the motor-cycle and the motor-cyclist could have avoided the accident by the exercise of requisite care and caution; hence it

could not be said that Reoti Raman was guilty of negligence. It was also held that the motorcycle was not being driven rashly or negligently by

Reoti Raman; rather the accident took place because Mahesh Vijai Singh, the deceased, abruptly turned towards the road and the distance

between him and the motor-cycle was not such that the driver could have avoided the accident, Further, it was held that Reoti Raman had no

licence on the date of the accident because he had not renewed his learner's licence. He had also not obtained [permanent licence. He had thus

contravened the provisions of the Motor Vehicles Act. He had been convicted and sentenced u/s 112 of the Motor Vehicles Act. However, since

he was not disqualified for holding or obtaining licence, it could not be said that under the terms of the policy the Insurance Company was not

liable. The applicant was, however, held not to be entitled to any compensation because Reoti Raman was not found to be guilty of any negligence,

5. The contention that the application was not maintainable was rejected on the finding that the application for compensation had been filed by the

widow on her behalf as also on behalf of her son and daughter but the application was rejected on the ground that it was not established that Reoti

Raman was driving the vehicle negligently and rashly at the material time. Aggrieved, Smt. Ishwar Devil has preferred this appeal.

6. The following questions arise for determination of the appeal:

(1) Whether Reoti Raman respondent No. 1 was driving the vehicle negligently and rashly?

(2) Whether Reoti Raman was liable to pay compensation on the ground that he was driving the vehicle without a licence?

(3) Whether Oriental Fire and General Insurance Co. Ltd., the respondent No. 2, is liable to pay any compensation to the appellant?

(4) To what amount of damages, if any is the appellant entitled? Point No. 1

7. The site and the time of the accident are not disputed nor is it in dispute that Mahesh Vijai Singh was knocked down by motor-cycle No. UPZ

2719 as a result of which he received serious injuries which proved to be fatal and that he died after a few hours of the accident. The post-mortem

report was proved by Dr. K. K. Singhal P.W. 2,

8. It appears that a few minutes before the accident occurred Mahesh Vijai Singh, the deceased, was walking on the footpath on the left of the

road. He was proceeding towards the crossing of Qaiserbagh. Reoti Raman was coming on his motor cycle from the side of the bus stand towards

the crossing. It was deposed by Imtiaz P.W, 3 and Ram. Autar D.W, 1 that at the site of the occurrence certain persons were lying on their cots

on the footpath. At this very place where the cots were lying on the footpath Mahesh Vijai Singh left the footpath and tried to go to the other side

of the road by crossing the road. Reoti Raman was coming on his motorcycle from the side of the bus stand towards the Qaiserbagh crossing.

From his oral testimony it turns out that he had seen from a distance of 30 to 40 paces that a person was walking on the footpath. This person was

no one but Mahesh Vijai Singh and at that moment Mahesh Vijai Singh, according to Reoti Raman, was 8 or 10 paces away from the place of the

occurrence. He also admitted that the place of occurrence was 5 or 6 paces away from the footpath on the road and at the time of the accident no

vehicle was coming either from the "back or from the front side, Reoti Raman deposed that the speed of his vehicle at the time of the accident was

10 to 15 Kms. per hour and he applied the brakes only when the accident took place. From these facts stated by Reoti Raman it is quite obvious

that he could have with little care averted the accident. He had seen that a pedestrian was walking on the footpath and that thereafter that

pedestrian had left the footpath to cross the road and had almost covered 5 to 6 paces of the road. It has come in evidence that Reoti Raman was

also driving the vehicle on the left of the road. If the speed of his vehicle was only 10 to 15 Kms., he could have applied the brakes before dashing

against Mahesh Vijai Singh or at any rate he could have given a slight turn to his vehicle and gone ahead without dashing against Mahesh Vijai

Singh Inasmuch as there was a space of 5-6 paces from the footpath to Mahesh Vijai Singh and this space was quite sufficient for a motor bicycle

to pass through. Reoti Raman, however, did not apply the brakes in time; rather he disposed that he applied the brakes only when the accident

took place. This shows his negligence in driving. We, are therefore, unable to agree with the Tribunal that it could not be said that Reoti Raman

was guilty of negligence. Reversing the finding recorded by the Tribunal, we hold that the motor cycle was being driven negligently by the

respondent Reoti Raman. We are also, in view of the facts stated herein-above, unable to hold that the accident had taken place because Mahesh

Vijai Singh had abruptly turned towards the road and the distance between him and the motor-cycle was not such that the driver could have

averted the accident. Point No. 2.

9. Reoti Raman did not hold any driving licence at the material time when the accident occurred. He had a learner's licence from August 1967 to

October 1967 but had no licence during the period November 1967 to 9th May 1968. The accident took place on the night intervening 4th and

5th May, 1968. On that date admittedly Reoti Raman had no driving licence in his name. He secured a learner's licence for the period from 10th

May, 1968 to 9th August, 1968 and thereafter he obtained a permanent licence on 5th September, 1968. Section 1-A of the Indian Fatal

Accidents Act, 1855 provides that whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or

default is such as would if death had not ensued have entitled the party injured to maintain an action and recover damages in respect thereof, the

party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person

injured, and although the death shall have been caused under such circumstances as to amount in law to felony or other crime. The short question

to be decided is whether it was a wrongful act of Reoti Raman to drive the motor-bicycle without a licence. Section 3 of the Motor Vehicles Act,

1939 prohibits a person from driving a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorising

him to drive the vehicle. It also requires that no person shall drive a transport vehicle unless his driving licence specifically entitles him so to do.

Reoti Raman not having a licence to drive the motor bicycle should not have driven the motor bicycle on the public road. It was obviously a

wrongful act on his part. Inasmuch as he had no driving licence, his action was in contravention of Section 3 of the said Act, He should have first

obtained a driving licence and then attempted to drive the vehicle. He had a learner's licence but its period had expired. He had also obtained a

learner's licence after the accident and ultimately had procured a permanent driving licence. The object of Section 3 of the Motor Vehicles Act is

to ensure the safety of the pedestrians" as also other persons using the road and provide them with a guarantee from "being hit by a vehicle driven

by a person who has not attained proficiency in the art of driving and has not obtained a driving licence. The requirement of Section 3 of the said

Act is mandatory. It prohibits in specific terms that no person shall drive the vehicle without a driving licence. This provision is salutary in nature

and ensures public safety. It is a safeguard against accidents which may at times prove fatal. Reoti Raman was also convicted and sentenced u/s

112 of the Motor Vehicles Act because of this accident. He drove the vehicle without holding a driving licence and acted in violation of law. His

act was wrongful. While thus driving his motorcycle on the public road he collided with Mahesh Vijai Singh and the accident proved fatal. He is,

therefore, liable to pay compensation on this ground as well.

Point No. 3.

10. For the respondent No. 2 it was urged that under the terms of the policy the insurance company would not be liable. The motor-cycle No.

UPZ 2719 was insured with the respondent No. 2 for the period from 11th February, 1968 to 10th February, 1969. One of the terms of the

insurance policy was as follows:--

Provided that the person driving holds a licence to drive the motor-cycle or has held and is not disqualified for holding or obtaining such a licence.

Admittedly prior to the occurrence Reoti Raman had held a learner's licence but on the date of the accident he had no driving licence in his name.

He obtained the learner's licence after the accident for the period from 10th May, 1968 to 9th August, 1968. Thereafter he obtained a permanent

licence on 5th September, 1968. It could not, therefore, be said that Reoti Raman was disqualified for holding or obtaining a driving licence. The

Insurance company cannot, therefore, avoid the liability by resorting to the aforesaid term of the insurance policy. The policy covered the third

party risk as well. It inter alia provided that subject to the limits of liability the company would indemnify the insured in the event of accident caused

by or arising out of the use of the motor-cycle against all sums including claimant's costs and expenses which the insured shall (become legally

liable to pay in respect of death or bodily injury to any person. Under Sub-section (2) of Section 9-5 of Motor Vehicles Act a policy of insurance

shall cover any liability incurred in respect of any one accident in respect of persons other than passengers carried for hire or reward, a limit of fifty

thousand rupees in all. Clause (c) of Sub-section (2) of Section 95 provides that save as provided in Clause (d) the amount of liability is covered

by the policy of insurance. Reoti Raman and the insurance company were, therefore, in the circumstances liable to pay compensation.

Point No. 4.

11. Mahesh Vijai Singh was doing the job of a typist in the court compound of the High Court, Lucknow Bench. According to Avadhesh Kumar,

his monthly income therefrom was about Rs. 300 or Rs. 400 per month. Avadhesh Kumar was, however, not quite sure about the exact figure.

We, therefore, assume that his income was round about Rs. 350 per month. There is no evidence on the record to come to a different figure. He

had a family to maintain. That family at the time of the accident consisted of his wife, two children and himself and he spent his income on the

maintenance of that family. Assuming that he spent about Rs. 150 for his personal maintenance, a sum of Rs. 200 per month was contributed by

him for the maintenance of his wife and children. The appellant has obviously been deprived of this aid because of his death. Mahesh Vijai Singh

was about 58 years old at the time of the accident. In normal conditions Mahesh Vijai Singh would have survived for some more years. The

question now arises as to what multiplier be used in determining the amount of compensation. In this connection it is to be remembered that the

amount which has to be awarded will be the final amount which the widow and his children must deploy so that to the extent reasonably possible

they get the equivalent of what they had lost. A reasonable and realistic and common sense view has, therefore, to be taken in the matter while

fixing a figure which is neither unfair to the recipient nor to the one who has to pay. The award should neither be too high nor too low. In assessing

damages considerations of matters which rest in speculation or fancy have to "be excluded but conjecture to some extent is inevitable. There can

be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical

calculations but the amount recoverable depends on the particular facts and circumstances of each case: See C. K. Subramonia Iyer v. T.

Kunhikuttan Nair (AIR 1970 SC 375). The number of years purchase is left fluid and it should not be materially reduced by reason of the

hazardous nature of the occupation of the deceased man. In the instant case the nature of the occupation of Mahesh Vijai Singh was not

hazardous. He was a bread winner of the family. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, it was held that

the actual extent of the pecuniary loss to the dependant may depend upon data which cannot be ascertained accurately, but must necessarily be an

estimate or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one

hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them

by reason of the death, i.e., the balance of loss and gain to a dependant by the death must be ascertained. In the instant case it was not unlikely that

Mahesh Vijai Singh would have given financial assistance to his dependants for another period of at least seven years. We, therefore, think that on

the facts of this case the right multiplier will be seven. At this figure the amount of compensation works out to Rs. 16800. We have arrived at this

figure by also taking into consideration the imponderable factors and uncertainties, Mahesh Vijai Singh was not employed in any permanent service

and thus he did not have any security of tenure. One did not know he might have remained unemployed for some time in life. These are all,

however, conjectural matters. We, therefore, think that the sum awarded by us is neither too low nor over generous. Smt. Ishwar Devi, Dinesh

Kumar and Kumkum being the widow, the son and the daughter respectively of the deceased Mahesh Vijai Singh are entitled to get the said

compensation of Rs. 16800. This compensation amount shall be shared by them equally,

12. In the result, the appeal is allowed with costs. The judgment and decree passed by the Tribunal are set aside. The claim petition is partly

allowed. The claim for compensation for Rs. 16,800 is decreed with costs in favour of Smt. Ishwar Devi, Kumkum and Dinesh Kumar and against

the respondents Reoti Raman and Messrs. Oriental Fire and General Insurance Co. Limited. The liability of the said Insurance Company will be

limited to Rs. 16,800 and costs of the claim petition as also of this appeal.