(1986) 08 GAU CK 0002

Gauhati High Court

Case No: M.A. (F) No. 33 of 1979

Assam State Road Trans. Corpn.	APPELLANT
Vs	
Halaluddin Ahmed	RESPONDENT

Date of Decision: Aug. 20, 1986

Acts Referred:

- Constitution of India, 1950 - Article 41
- Motor Vehicles Act, 1988 - Section 78
- Motor Vehicles Driving Regulations - Regulation 1

Citation: (1988) ACJ 711

Hon'ble Judges: K.N. Saikia, J; B.L. Hansaria, J

Bench: Division Bench

Advocate: B. Sarma and Y.K. Phukan, for the Appellant; S.K. Sen and A.R. Paul Mazumdar, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Saikia, J.

On 21.7.1974 at about 1.45 p.m. the Respondent, Halaluddin Ahmed, was proceeding towards Gauhati on his Royal Enfield motor cycle No. RA 7814 taking Azad Ali on his pillion. As he reached 9th mile opposite to the C.R.P.F. camp, an Assam State Road Transport Corporation bus No. ASX 2152 dashed against his motor cycle as a result of which Halaluddin and his pillion rider, Azad Ali, were thrown away on the left hand side of the road causing severe injuries to both. Halaluddin became unconscious; he regained his consciousness after three days at the Gauhati Medical College Hospital only to find his right leg already amputated above his knee. He had to undergo treatment at the G.M.C. Hospital for about eight months, and has become permanently invalid. He had to discontinue his studies in B. Sc. and also his service in Walford Company.

2. He claimed compensation of Rs. 2,00,000 on various counts. The claim was resisted by the Appellant, Assam State Road Transport Corporation, shortly ''the Corporation'', on the grounds, inter alia, that the accident was not caused by any rash and negligent driving on the part of the driver of the bus, that the claimant and his pillion rider were, in fact, swaying to and fro before the accident and suddenly their motor cycle swerved to their right side and struck the right rear wheel of the bus and was thrown off; and that the Corporation was, therefore, not liable to pay any compensation. The driver in his written statement stated that the claimant drove his motor cycle in a rash and negligent manner in high speed for which he failed to control its speed as a result of which he dashed against the right rear wheel of bus ASX 2152.

3. Before the Tribunal the claimant examined 7 witnesses including the Investigating Officer and the doctor, while the opposite party (Appellant) examined 3 witnesses, including the driver.

4. The Tribunal held that it was the driver of the bus who was rash and negligent and not the motor-cyclist, and awarded for pain, mental and nervous shock Rs. 10,000/- ; for medical expenses Rs. 3,021.42; for loss of earning capacity and cost of maintaining himself by engaging assistant Rs. 38,400/- , the total award being Rs. 51,421.42. Hence this appeal by the Corporation.

5. Mr. B. Sarma, the Learned Counsel for the Appellant Corporation, ably assisted by his learned junior Mr. Y.K. Phukan, has not challenged the quantum of the award. What he challenges is the finding that the driver was rash and negligent in driving the bus and not the claimant According to Mr. Sarma, the road was clear and as the bus was negotiating a turning it had to ply a little right of the central line of the road; but enough space was left for the motor cycle of the claimant to pass by the right side of the bus and that unless the claimant was negligent, there was no reason as to why the motor cycle should have dashed against right rear wheel of the bus. In other words, Mr. Sarma submits that even if there was a little negligence on the part of the driver of the bus, the claimant himself greatly contributed towards the accident and the Tribunal ought to have taken this factor into consideration and apportion the damage proportionately.

6. Mr. S.K. Sen, ably assisted by his learned junior Mr. AR. Paul Mazumdar, for the claimant-Respondent, answers that on their own showing the driver of the bus was negligent as it did not keep to its left but traveled beyond the central line to the right leaving only 5'' 9* of the pitch a part whereof too was broken and uneven. The breadth of the motor cycle from handle to handle being nearly 2Vi feet, it was natural that the accident occurred; and that no explanation has been given as to why in spite of the road being otherwise clear the bus did not keep to its left and traveled far to the right of the central line causing the accident.

7. To appreciate the rival contentions we have to keep the traffic rules in mind. Section 78 of the Motor Vehicles Act, (in short ''the Act''), prescribes a duty to obey traffic signs. Under Sub-section (1) thereof, every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by a mandatory traffic sign and in conformity with the driving regulations set forth in the Tenth Schedule of the Act which contains the Driving Regulations. Regulation 1 thereof says:

The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

Applying the above regulation, we find that the accident occurred at a spot on the pitched portion of the road 14 feet from the left pitch line of the road and only 5'' 9" of pitch was left to the right of the place of occurrence. The sketch map (Exh. 10) shows that beyond the right pitch line there was a line of boulder stacks beyond which lay the grassy portion. No doubt, there were boulders also on the left (southern side) of the road beyond the grassy portion and there appears to be no obstruction on the grassy portion itself. No explanation is forthcoming as to why the bus failed to keep to its left and traveled so much to the right of the middle line so as to allow its rear right wheel to be at only 5'' 9" from the right pitch line. There is no dispute that there was a slight bend from left to right at that portion of the road and that at the relevant time the visibility was normal. No other vehicle was there, nor was there any animal or pedestrian obstructing the bus. We, therefore, have no doubt that the driver of the bus failed to observe the driving Regulation No. 1 given in the Tenth Schedule of the Act. On the other hand we find that the motor cycle was keeping to its left and was far from the middle line. As beyond 5'' 9" there were boulders, the motor cycle could not be expected to drive so close to the boulders as to dash against those. The resultant space left for the motor cycle was really narrow. We also find from the sketch map that motor cycle itself was thrown to a distance of 31'' 2", that too over the boulders, and clotted blood marks were found to the right of that place at a distance of 8'' from the motor cycle.
8. From the medical report it is found that Halaluddin suffered the following injuries:

(1) Crushed injury extending from knee joint to the heel on right leg, bone pieces exposed-injury caused by blunt weapon- grievous injury.

(2) Compound fracture of the shaft of right femur-caused by blunt weapon grievous injury.

(3) One lacerated injury over the right side of the forehead (2" X 1") caused by blunt weapon simple injury.

The impact of the accident can be well imagined from the above injuries suffered by the motor-cyclist. As against that from the M.V.I''s report (Exh. 9) we find that the body of the motor cycle was slightly scratched on the right side; that the engine of

the motor cycle could not be started; brakes could not be tested on road, but there was no trace of damage in the brake system; and the steering of the motor cycle was damaged. The motor cycle was examined by the M.V.I, on 25.7.1974 at the Sadar Thana compound at Gauhati and his report was dated 6.8.1974. The bus was examined by the M.V.I, on 23.7.1974, i.e., two days after the accident in front of the D.T.O''s office, Gauhati. He found no other damage except a scratch mark on the rear outer wheel. However, the dimension and other particulars of the scratch were not given and the M.V.I, was not examined before the Tribunal.

9. On the basis of the above particulars we have to determine as to who was negligent and whether there was contributory negligence, as submitted by the Corporation. It is settled law that mere going on the wrong side of the road is not negligence but non-observance of highway rules may under certain circumstances indicate negligence. The effect to be given to such failure, as was held in Joseph Eva Ltd. v. Reeves (1938) 2 All ER 115 will necessarily depend upon the circumstances of each case. It is open to the claimant to rely upon the infringement of the rule to show that the driver omitted to do something which a reasonable driver guided by the driving regulations would do and was consequently negligent. Negligence, in any given circumstances, is the failure to exercise that care which the circumstances demanded. What amounts to negligence depends on the facts of each particular case and the categories of negligence are never closed. Negligence, as was observed by House of Lords in Donoghue v. Stevenson (1932) AC 562 "is a fluid principle, which has to be applied to the most diverse conditions and problems of human life. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to - persons or property. The degree of care required in the particular case depends on the accompanying circumstances, and may vary according to the amount of risk to be encountered and to the magnitude of the prospective injury". In so far as the concept of negligence in highway accidents is concerned, when two parties on the highway are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot, or where one is on foot and the other controlling moving vehicle. It is true that the public have a right to proceed by vehicular traffic on the highway, and, if persons or property on or near it are injured by that traffic, the injured party must bear his own loss unless he can establish a breach of duty on the part of some other person. The duty is to use such care as is reasonable, and where a driver is faced with a sudden emergency, he can only be expected to do that which an ordinary reasonable man would do. The duty is owed to such persons as are within the area of potential danger and to whom the Defendant could reasonably

foresee the risk of injury if he or his servant failed to exercise care. The duty on the highway is in part determined by reference to the driving regulations.

10. In the instant case, admittedly, there was no other vehicle except the two. Therefore, each owed a duty to avoid injury in respect of the other. The duties in such cases to exercise due care on the highway are in part determined by reference to detailed directions given in the traffic regulations. A failure on the part of any person to observe any provision of the traffic regulations may, in any civil proceedings, be relied upon as tending to establish or negative any liability. In the instant case as we have already observed, that the Regulation 1 of the Driving Regulations was observed by the motorcyclist but was not observed by driver of the bus. It is common knowledge that driving regulations require that drivers of vehicles or riders should keep well to the left side of the highway unless they are about to overtake another vehicle or to turn to the right. If two motor vehicles collide in the centre of the road, the inference is, in the absence of evidence enabling the court to draw any other conclusion, that the drivers of both were equally to be blamed, and it is not a proper decision to hold that, in the absence of evidence enabling the blame to be fixed upon one driver or the other, no sufficient case has been established against the other. In the instant case we have no doubt in our mind from the spot where the collision took place that it was the driver of the bus who was to be blamed and not the driver of the motor cycle.
11. Under the above circumstances can we say that the motor-cyclist himself contributed towards the accident so that he can also be held liable for the contributory negligence? In Halsbury''s Laws of England, 3rd Edn., Vol. 28, p. 87 we read:

In an action for injuries arising from negligence, it was a defence at common law if the Defendant proved that the Plaintiff, by some negligence on his part, directly contributed to the injury in the sense that his negligence formed a material part of the effective cause thereof. When this is proved the Plaintiffs negligence is said to be contributory.

As was observed in Wakelin v. London and South Western Rly. Company (1886) 12 AC 41 contributory negligence consists of the absence of that ordinary care which a sentient being ought reasonably to have taken for his own safety, and which had it been exercised would have enabled him to avoid the injury of which he complains, or the doing of some act which he ought not to have done and but for which the calamity would not have occurred.

12. The speed at which a vehicle is driven is material to the question of liability. What is dangerous speed is a question of fact? In the instant case while P Ws 1 and 5 clearly stated that the bus was being driven at a very high speed the claimant as well as the pillion rider corroborate that statement. The normal principle is that the speed should be such as to permit the driver to stop or deflect his course within the

distance he can see is clear. The amount and kind of traffic is also relevant in calculating what is a dangerous speed. Even if the bus was not keeping to its left that by itself would not have indicated any negligence but as the bus was being driven on wrong side of the road at high speed that naturally affected the opportunity for the vehicles on the opposite side to get themselves cleared of it. No explanation has been given as to why the bus had to cover as wide as 14'' of the pitch allowing the rear right wheel to be at 5'' 9" leaving a narrow line for the crossing vehicle to clear, a part of which pitch too was broken. The high speed of the bus was a contributing factor.

13. There is some controversy as to which part of the bus was hit by the motor cycle. While the claimant and the pillion rider stated that the vehicle was hit by the front bumper of the bus, on the right side, PW 5 said that it was the front mudguard that hit the motor cycle. It is the definite case of the Corporation that the motor cycle dashed against the right side rear wheel of the bus. From the scratch found by the M.V.I, on the right side the inference is sought to be drawn that the scratch must have been caused by the dashing against the motor cycle. From the report of the M.V.I, that on the body of the motor cycle also there is a slight scratch, and considering the impact of the accident we have some doubts as to whether the scratch mark was really caused by the accident. We also take into consideration the fact that the bus was examined after two days of the accident and there is no evidence to show that there was no such scratch mark prior to the accident.

14. Applying the law as enunciated above to the facts of the instant case we are of the view that there was no negligence and, therefore, no contributory negligence on the part of the claimant.

15. Mr. Phukan has referred us to the decisions in Jaspal Bajwa and Others Vs. Dalbir Singh and Others, ; District Transport Co-operative Society Ltd. and Another Vs. Janak Rani and Others, and State of Gujarat Vs. Dushyantbhai Nagjibhai Patel and Another . The facts of those cases are different from those of the instant case. In Jaspal Bajwa and Others Vs. Dalbir Singh and Others, , the findings were that the deceased could very well see the truck coming from the opposite side; he or his scooter was not run over by the truck; the scooter and the truck hit each other with the result that the deceased along with the scooter fell down and suffered injuries; that the deceased could have very easily avoided the impact with the truck by taking the scooter to his further left; and that he was hit by the truck because he did not do so. Under those circumstances it was held that the scooterist himself contributed to the cause of the accident. In the instant case, in view of the high speed of the bus, the space available to the motor cycle to clear itself, the line of the road where the bus was being driven, the existence of boulder stacks beyond the pitch and broken pitch, we do not consider it reasonable to apply the conclusion of that judgment to the instant case. In State of Gujarat Vs. Dushyantbhai Nagjibhai Patel and Another , the scooter was coming to the main road from the side road. The scooterist was

unmindful of the traffic in the intersection before entering the main road. There was no intersection in the instant case.

16. Normally, a State Transport Corporation is expected to be able to gauge the nature of its liability for accidents caused by any of its fleet of vehicles and reasonably settle the claims with parties with sympathy and fairness, if not with magnanimity. In Rajasthan State Road Transport Corporation, Jaipur Vs. Narain Shanker and Others, , Krishna Iyer, J. expressed at para 4:

The State Corporation has contested even the quantum of the claim. Indian life and limb cannot be treated as cheap at least by State instrumentalities. The heads of claim have been correctly appreciated by the Tribunal and the awards have been moderate. Here again, the State Corporation should have sympathized with the victims of the tragic accident and generously adjusted the claims within a short period. What is needed is not callous litigation but greater attention to the efficiency of service, including insistence on competent, cautious and responsible driving.

It was further observed in paragraph 3:

In the present case, the State Corporation put forward a false plea and contested the application of the principle of res ipsa loquitur to avoid liability. It would have been more humane and just if, instead of indulging in wasteful litigation, the Corporation had hastened compassionately to settle the" claims so that goodwill and public credibility could be improved. After all, the State has a paramount duty, apart from liability for tort, to make effective provision for disablement in cases of underserved want Article 41 of the Constitution states so. It was improper of the Corporation to have tenaciously resisted the claim. It was right on the part of the Tribunal to have raised a reputable presumption on the strength of the doctrine of res ipsa loquitur.

Similarly, in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, it was observed in para 3:

Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to

their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practiced by Tribunals. We must remember that judicial Tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

17. We have taken into consideration the facts that a young man of 25 years, who was not negligent, had his leg amputated and the accident invalidated him for the rest of his life. He had to give up his study at B. Sc. as well his job and had to face an uncertain future for the rest of his life. We do not find the amount awarded to be unreasonable or unjustified. There is no infirmity in the award.

18. In the result, this appeal is found to be without merit and it is rejected. Under the facts and circumstances of the case we refrain from passing any order as to costs. The stay order dated 31.7.1979 stands vacated.