
(1974) 04 GAU CK 0001

Gauhati High Court

Case No: Misc. Appeal (F) No. 25 of 1972

Fulpati Devi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: April 24, 1974

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110B, 110D

Citation: (1974) ACJ 497

Hon'ble Judges: D.M. Sen, J; D. Pathak, J

Bench: Division Bench

Advocate: Prashanta Kumar Goswami, for the Appellant; M.S. Rahman, for the Respondent

Final Decision: Allowed

Judgement

D.M. Sen, J.

This is an appeal by the claimant Mrs. Fulpati Devi u/s 110 D of the Motor Vehicles Act, 1939 against the award of the Member, Motor Accident Claims Tribunal, Dibrugarh, rejecting the claim for compensation in respect of the death of her husband Ram Nath Bhagat, arising from a motor accident caused by the driver of the vehicle No. F 7 Ton 1262, namely Kulappan, witness No. 2 for the Respondent opposite party (Union of India).

2. The facts leading to the unfortunate death of the claimant's husband may be stated briefly. Ram Nath Bhagat, who was about 35 years old at the relevant time and was drawing Rs. 250/- per month from M/s. Dibrugarh Hardware Stores, P.O. Rehabari, Dibrugarh, was going on a bicycle from west to east by the railway station at about 3.30 p.m. on 23.4.1970, when vehicle No. F-7 ton-1262 caused injuries to him resulting in his death. The injuries as sustained by Ram Nath Bhagat were adverted to by Dr. H.N. Ganguli, witness No. 4 for the opposite party. He found the following injuries on the body of the deceased:

- (1) One bruise 1 1/2" x 1/2" on left side of right hand.
- (2) One bruise 1" x 1/2" on lateral side right loin.
- (3) One abrasion 8" x 5" on lower part of right side of abdomen, extending up to the thigh.
- (4) One lacerated wound 1" x 1/2" on right little finger.
- (5) One lacerated wound 3" x 2" on medial side of right leg at its middle third.
- (6) One lacerated wound 1" x 2" on right side of abdomen, just above pelvic bone.

All the injuries were ante mortem. In the opinion of the Doctor the person died of hemorrhage, fracture and shock. The injuries were sufficient to cause death of the person. In this opinion the injuries were caused by running over of a motor vehicle.

3. According to Akalu Bhagat witness No. 2 for the claimant - "A military vehicle was coming in a high speed from the opposite side. The vehicle knocked down Ram Nath Bhagat by the left side of the vehicle. Ramnath was proceeding on the bicycle very slowly. The vehicle came in a very high speed." However, Kanailal Misra, witness No. 5 for the claimant in his deposition states: "By that time, a military truck came from the station side. A man was coming by riding a bicycle before the truck. The truck came rashly and knocked the bicycle of this man. The man fell down along with the cycle, but he fell on the cycle." Ananda Baruah, witness No. 6 for the claimant states: "A military truck was coming rashly through the road from west to east. The truck came towards the left to some extent with a view to giving pass to a taxi, but the truck came rashly and knocked the cyclist with its bumper from behind, who could get no chance for going towards the left side any more. Immediately the truck stopped."

4. From the deposition quoted above, it will appear that the deceased was properly on his left side of the road and that when the vehicle overtook the deceased, who was riding on a bicycle, it knocked the deceased down. This version also gets support from the evidence of Mr. M.C. Mathai, witness No. 1 for the opposite party, who states: "We reached railway station at about 3.30 p.m. Thereafter, we were proceeding towards bazaar at 10/12 K.M. speed. At that time, we heard a sound towards our backside after crossing of a cyclist near the Petrol Pump. On looking behind we saw that two bicycles knocked each other and one of the cyclists fell down towards the rear wheel of the truck. The wheel rolled over the fingers of his leg. The vehicle having been stopped, I got down and pulled out the injured." Kulappan, the driver of the vehicle, who is witness No. 2 for the opposite party, also states: "As soon as the Petrol Pump of the railway station road was crossed, two bicycles knocked each other and one of the cyclists fell down under the vehicle. Mathai Saheb told me to stop the vehicle."

5. It is, therefore, clear from the evidence adduced by the claimant as well as from that adduced on behalf of the opposite party that the deceased was on his left side of the road, when he was overtaken by the offending vehicle and that as a result of the impact with the rear of the offending vehicle, he fell down, resulting in injuries causing his death.

6. We have now to determine from the evidence on record, how far any negligence or rashness can be imputed to the driver of the vehicle, so as to entitle the claimant to compensation, as prayed for by her.

7. There are clearly two versions of the incident, in the instant case. The claimant contends that the deceased was riding his bicycle on the left side of the road, when the vehicle, crossing from behind at a high speed, knocked him off in such a manner that he fell down partly under the vehicle, sustaining the fatal injuries in question. The driver witness No. 2 for the opposite party and Mr. M.C. Mathai witness No. 1 for the opposite party, who was in the vehicle at the time of the accident, however, states that as a result of a collision between the deceased's cycle and some other cycle, the deceased fell down under the rear of the offending vehicle. In point of fact, they both state that they heard the sound of the impact of the collision between the two cyclists and thereafter when they looked behind, they found that the deceased's cycle fell down under the rear part of the vehicle. This version is highly improbable, if not completely untenable. A passenger in a vehicle and certainly the driver of that vehicle, who would normally be looking ahead, would not see or notice what is happening behind, unless it was something very unusual. In this case for both Mr. M.C. Mathai and the driver to look behind, when they heard the sound of the collision between this two cyclists and then to see that deceased cyclist fell down under the vehicle is an improbability of such a nature and to such an extent, that it must be rejected as wholly incredible. In our considered opinion the story put up by witnesses Nos. 1 and 2 for the opposite party regarding the collision of the deceased with another cyclist is imaginary and does not bear any semblance of truth. Further, they could not, in our opinion, have seen the deceased fall down from his cycle and thereafter be run over by their vehicle. The deposition of witnesses Nos. 1 and 2 for the opposite party to the effect that they heard a sound on behind after crossing of a cyclist near the Petrol Pump and on looking behind they saw that two bicycles knocked each other and one of the cyclists fell down towards the rear wheel of the truck cannot, in our opinion, bear any scrutiny. To that extent we are of the opinion that the story of witnesses Nos. 1 and 2 for the opposite party must be disbelieved.

8. We are, therefore, left with the version of the claimant, which, in our opinion bears the mark of credibility and deserves to be accepted. That being so, the offending vehicle was clearly being driven in a negligent and rash manner. As such, the death of Ram Nath Bhagat was caused by the negligent or rash act of the driver of the offending vehicle. Accordingly, we are of the opinion that the claimant is fairly

entitled to compensation.

9. As regards the quantum of compensation that is to be allowed by a Claims Tribunal u/s 110 B of the Motor Vehicles Act, we have decisions of several High Courts and of this Court as well. In an unreported decision of this Court in [Kaniya Khatun and Another Vs. Union of India \(UOI\)](#), it has been held, following the principles determining the grant of compensation in Nance v. British Columbia Electric Railway Co. Ltd. 1951 A.C. 601, that "a just and fair calculation of the compensation would be what the beneficiaries would have received from the deceased as support for their maintenance and also as inheritance from his savings, had the deceased lived and earned to the age of 60 years." We have also to take into consideration the expenses which the deceased would have incurred for maintaining himself and also the normal hazards of life. Considering all this, we are of the opinion that a sum of twenty years purchase of the deceased's monthly income of Rs. 250/-, subtracted by a sum of Rs. 50/- which would have gone for maintaining himself, would be fair amount of compensation. We thus calculate that the amount of just and fair compensation in this case would be a sum of Rs. 48,000/- (forty-eight thousand). This amount will be paid, within two months from the date of the order, by the Respondent to the Appellant,
The appeal is allowed.