Smt. Sumati Debnath Vs Sunil Kumar Sen and Another

Court: Gauhati High Court

Date of Decision: June 1, 1993

Acts Referred: Evidence Act, 1872 â€" Section 101, 102, 103, 104
Motor Vehicles Act, 1939 â€" Section 110B, 110CC

Citation: (1994) ACJ 734 : AIR 1994 Guw 59

Hon'ble Judges: N.G. Das, J

Bench: Single Bench

Advocate: S. Deb, for the Appellant; D.K. Biswas, for the Respondent

Final Decision: Allowed

Judgement

N.G. Das, J.
This appeal u/s 110D of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) is directed against the judgment

and award passed by the Second Member of the Motor Accident Claims Tribunal, Agartala in Title Suit No. 5 (Motor Accident) of 1978

dismissing the claim petition.

2. Put very shortly, the facts leading to this appeal are that on 5-2-1978 deceased Ratan Debanth who was 16 years of age at that time was

coming from Bishalgarh to Agartala in a Minibus bearing No. TRS-371 along Bishalgarh Agartala Road and when the vehicle reached near

Harishnagar Tea Estate it suddenly went out of the road and virtually over-turned causing severe injuries on Ratan Debnath and a few other

passengers. Soon after the accident Ratan Debnath and a few other injured were removed to G.B. Hospital at Agartala but unfortunately on 9-2-

1978 Ratan Debnath expired. It was alleged that the accident occurred on account of negligent and rash driving.

3. The mother of the deceased, therefore, presented an application u/s 110 A of the Act on 17-4-78 claiming compensation for a sum of Rs.

40,000/-.

4. It was stated that at the time of accident deceased was prosecuting his studies in Class-IX in Anandanagar High School and he was very

intelligent and amiable in nature. It was, therefore, stated that after completing of his education the boy would be in a position to earn a decent

income and render help to the family. In the claim petition it was mentioned that a claim was lodged with the owner but the owner did not satisfy

the claim, The petitioner could not mention the name of the driver in the claim petition as name of the driver was not known to her.

5. However, the owner Shri Sunil Kumar Sen and Insurance Company namely, the United Fire and General Insurance Co. Ltd. resisted the claim

petition by filing separate written statements. In his written statement the owner denied the material averments of the claim petition and stated that

this claim petition was speculative, unjustified and not maintainable in accordance with law. It was stated that the accident did not occur on account

of negligent and rash driving. It was also denied that the deceased boy would be in a position to earn handsome income in future. The further

contention of the owner is that the vehicle was duly insured and hence the owner is not liable to pay any compensation.

6. The United Fire and General Insurance Co. Ltdf. resisted the claim by filing a separate written statement where it was contended that the claim

petition was barred by limitation and it was bad for defect of parties and non-joinder of necessary party. It was averred that the Minibus which

was involved in the accident was not insured with the answering opposite party and the claim petitioner having not disclosed the material facts this

claim petition was liable to be dismissed. It was also denied that the deceased boy boarded the Minibus bearing No. TRS-371 and he was coming

in that bus to Agartala.

7. Upon the pleadings the following issues were framed :--

1. Whether the accident occurred due to the negligent driving of vehicle No. TRS-371?

2. Whether the deceased was a student of Class IX and whether he was aged 16 years at the time of death as alleged?

3. Whether the petitioner is entitled to any compensation? If so, to what extent?

4. Whether the vehicle No. TRS-371 was insured with the O.P. United India Insurance Co. Ltd.?

5. To what relief, if any, the parties are entitled?

8. Learned claims Tribunal rejected the claim petition after deciding all the issues against the claim petitioner. Hence this appeal.

9. It was held by the learned Member of the Claims Tribunal that the accident did not occur due to the negligent driving of vehicle No. TRS-371

but the accident took place as it was beyond the control of the driver.

10. Mr. S. Deb, the learned senior counsel appearing on behalf of the appellant has, at the very out set, argued that the finding of the learned

Member of the Motor Accident Claims Tribunal is perverse and contrary to the established principle of law. It is submitted by Mr. Deb that in a

case of this nature the maxim ""res ipsa loquitur"" "" would be attracted. According to Mr. Deb it is the driver who had the special knowledge of the

relevant facts to explain why the vehicle overturned. In the present case it appears that driver Shri Santosh Chandra Saha did not contest the case

by filing any written, objection. He was, however, examined as O.P.W. No. 2 and he stated that on 5-2-1978 he was driving the vehicle bearing

No. TRS-37 j and when the vehicle came near Harishnagar Tea Estate it suddenly felt a jerk while crossing over a pot-hole. According to him due

to this jerk the main spring leaf on the left side of the vehicle broke and the vehicle went off the road and over-turned. His further version is that at

the material time he was driving the vehicle at a speed of 35 to 40 k.m. per hour but Mr. Deb has argued that there is no evidence on record to

show that the driver was driving the vehicle with meticulous caution. It is submitted by Mr. Deb that it is incumbent upon the driver to drive the

vehicle in such a way so that in the ordinary course of nature it might not face any accident. According to him the very statement of the driver

shows that the accident occurred because there was a pot hole on the road. So, even if it is accepted as true then it is not clarified why the driver

failed to see that pot hole which was admittedly on the surface of the road. Mr. Deb has quite emphatically argued that this very statement indicates

that the driver was negligent and not cautious at all in driving the vehicle.

11. Mr. Biswas, the learned counsel appearing on behalf of the respondent No. 2 has, however, contended that if the maxim "res ipsa loquitur" is

found to be applicable in the present case then in view of the evidence on record that a spring leaf on the left side of the vehicle suddenly broke

down it must be held that the driver has d is charged his burden as to why the accident look place. The maxim res ipsa loquitur means that the

accident talks or the things speak for themselves. There may be certain accident which are patent and self-speaking that they will shift the burden

of proof on the defendant. It is no doubt, a rebuttable presumption. Before a Tribunal to succeed in an action against the owner or driver of the

vehicle, the claimant has to establish some negligence or a breach of duty by the defendant towards him and its causal connection with the injuries

sustained by the victim.

12. In the instant case the driver who has been examined as O.P. W. 1 has stated that when the vehicle reached near Harishnagar Tea Estate it

suddenly felt a jerk and on account of that jerk the main spring leaf on the left side of the vehicle broke down and went off the road. But P. W. 2

has stated in his deposition that the driver was driving the vehicle at a great speed and as a result of that high speed the bus suddenly dashed

against a tree and over turned. The witness has been cross-examined but I see no reason why credence should not be placed on his testimony. The

plea of the driver that there was a pot hole on the surface of the road and as a result of that the accident was inevitable. But I am not prepared to

appreciate such a plea for such an accident as it was incumbent upon the driver to see whether there was any pot hole or speed breaker on the

surface of the road. There is factually no cogent evidence to show that there was a pot hole on the road. That apart the evidence on record does

not show that before bringing the vehicle out of the garage the driver checked the vehicle thoroughly and there was no defect to be discovered.

There is no evidence to show that the spring leaf which broke down had the capacity to be used on the date when the accident took place. It is the

duty of the driver to see if any impediment is on the way. But on a careful scrutiny of the evidence on record J do not find that the driver was

vigilant and that he thoroughly checked the vehicle before bringing it out of the garage.

13. In inviting a reference to Dias on tort Mr. Deb has submitted that in investigating the matter of negligence, the elements and principles of tort

have to be invoked and the defence open in the case of (sic) negligence. What is negligence depends upon determination of various factors. There

are three basic elements of tort (1) an act or omission on the part of the defendant (2) intention or negligence or the breach of a strict duty on the

part of the defendant and (3) damages resulting to plaintiff from the wrongful act of the defendant which is not too remote. An act would mean

doing of a positive act and omission means breach of duty. Normally the burden of proof that the vehicle was being driven rashly and negligently at

the time of accident is on the claimant. But where the evidence is that the vehicle did not go in the usual manner and went off the road and dashed a

tree, the doctrine "res ipsa loquitur" (i.e. thing speaks for itself) is attracted and the burden shifts on the other party.

14. In the instant case in view of the evidence and circumstances found by me above I am of opinion that the accident could have been avoided

had the driver been cautious in driving the vehicle. I, therefore, find that the accident occurred on account of the negligence and rash driving on the

part of the driver. The finding of the learned Tribunal on this point is accordingly not acceptable.

15. The next question which calls for determination is what amount of compensation the claimant is entitled to get. The claim petition shows that

mother is the claimant in this case and she claimed compensation for a sum of Rs. 40,000/- only. Mr. Biswas has argued that in the instant case the

claimant could not prove the age of the deceased affirmatively and as such the compensation may be confined to a sum of Rs. 5,000/- only. But

Mr. Deb has argued that the claimant being the mother of the deceased she is the most competent witness to say what was the age of her son on

the date of occurrence and as she has deposed on oath that on the date of occurrence the age of her boy was 16 years and he was prosecuting his

studies in Class IX there is no reason why her evidence should not be accepted. I have perused the evidence of P.W. 1 but I do not find that

during cross-examination anything could be elicited from her to discredit her testimony that the age of her son on the date of accident was not 16

years and he was not prosecuting his studies in Class IX. Learned Tribunal held that in absence of School Certificate it cannot be accepted that

age of the boy was 16 years. But in the absence of any evidence to the contrary I see no reason why the statement of mother should not be

accepted. I, therefore, hold that on the date of accident deceased Ratan Debnath was of the age of 16 years and that he was prosecuting his

studies in Class IX.

16. As regards compensation it is submitted by Mr. Deb that the age of the mother was around 50 years at the time of occurrence and as such she

could have reasonable expectation to get financial assistance from her son till the age of 70 years as the maternal grand father of the deceased died

at the age of 70 years and the grand mother of the deceased died at the age of 72 years. It is submitted by Mr. Deb that the deceased could, at

least, contribute Rs. 150/- a month to her mother for a period of 20 years after attaining majority.

17. In the case of C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, where their lordships held (at p. 380 of AIR):

Compulsory damages u/s 1A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the

measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and

and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverrable depends on the particular facts

and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the

elements which go to make up the value of the life of the deceased to the designated beneficiaries necessarily personal to each case, in the very

nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all

considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents '' are entitled to

recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of

pecuniary benefits reasonably to be expected after the child attains majority.

18. Now applying the above rules to the facts of the present case, it would be apparent from the evidence on record that the boy was 16 years of

age at the time of his death. It is in the evidence that the boy was prosecuting his studies in Class IX. Of course how he would have turned out in

life later is at best a guess. But we can at least expect that he would have been able to complete his school education and after attaining the age of

majority he would be in a position to earn some money. P.W. 1 in her cross-examination stated that her eldest son is a day labourer. Now a days

a day labourer also earns at least an amount of Rs.30/- a day. The claimant claimed compensation at the rate of Rs. 150/- a month i.e. Rs. l,800/-

a year. Such a claim does not appear to be excessive. Mr. Deb, the learned counsel appearing on behalf of the appellant has submitted that out of

ignorance the claimant demanded compensation of a sum of Rs. 40,000/-. According to Mr. Deb under the facts and circumstances the claimant is

entitled to get more than Rs. 40,000/- as the evidence on record will also show that she suffered mental shock on account of the premature death

of her son.

19. In Tehmina P. Jasawalla v. Mahadeo Sitaram Ghadi 1983 Acc CJ 666 their Lordships of the Bombay High Court in the case of death of boy

aged 16 years, awarded Rs. 50,000/-, although the Tribunal has allowed Rs. 31,400/-.

20. The Delhi High Court in Chameli Wati and Others Vs. Delhi Municipal Corporation and Others, treated the age of parents as 70 years or 75

years and allowed Rs. 38,522/- when the age of the parents at the time of the accident was 25 years of age. The Delhi High Court in Hazarilal v.

Dharam Pal Singh 1981 Acc CJ 439 : AIR 1981 238 in the case of death of student aged 17 years in appeal enhanced the award to Rs. 22,000/-

from Rs. 10,000/-.

21. Before I proceed to determine the amount of damages or compensation which is to be awarded in the present case, I must mention at the very

outset that I am conscious of the limitations laid down by the Apex Court that it should not be speculative, although the Apex Court itself was alive

and conscious of the hard reality that some element of conjectures is inherent in the claim cases.

22. Although in the claim petition it has been stated that the maternal grand father of the deceased died at the age of 70 years and the grand mother

of the deceased died at the age of 72 years, there is practically no evidence in support of the contention. So in absence of any evidence I am

inclined to accept the view taken by the Delhi High Court in Chameli Wati and Others Vs. Delhi Municipal Corporation and Others, and, hold that

the expectancy of the life of mother of the deceased would be 70 years. In view of this, the expectancy of the income would be Rs. 1,800/- per

year and since mother was aged about 50 years at the time of accident, she would be getting benefit for 20 years at least from the time when her

deceased son could start earning. I am, therefore, adopting multiple of 20 years expected dependency income of Rs. 1,800/- per year which

comes to Rs. 36,000/-. The claimant also stated in her deposition that she suffered mental shock for the death of her son. It is also an admitted fact

that the accident took place on 5-2-78 and the boy died on 9-2-78 i.e. after 4 days. He damage has, however been claimed for the sufferings of

the boy for this 4 (four) days. But the mother who is the claimant here is entitled to get some compensation for her mental sufferings and I assess

Rs.5,000/- for her mental sufferings. So, the amount comes to Rs. 41,000/-. But the petitioner-appellant has claimed only Rs. 40,000/-. She is,

therefore, entitled to get Rs. 40,000/- (forty thousand) only.

23. Now as regards interest it is argued by Mr. Biswas that the Insurance Company got the notice after 9 (nine) years. So, according to him no

interest should be given as the Insurance Company was not at fault for receiving the notice after such a long period. But that cannot be considered

to be a sufficient ground for not allowing the interest. I am of opinion that the claimant is entitled to get at least 6% interest from the date of

application till the date of realisation. That the vehicle was insured with the respondent No. 2 is an admitted fact and there is no controversy on this

point.

24. The result of the above discussion is that the compensation is assessed at Rs. 40,000/- (forty thousand) in favour of the claimant and she is also

entitled to get 6% interest from the date of presentation of the application till the date of realisation.

25. The appeal is accordingly allowed and the judgment of the trial court is set aside.