Munnibai Vs Subhash Singh and Others

Court: Madhya Pradesh High Court

Date of Decision: Nov. 3, 1987

Citation: (1988) 1 ACC 334

Hon'ble Judges: Sachchidanand Awasthy, J; C.P. Sen, J

Bench: Division Bench

Judgement

S. Awasthy, J.
The appellant has filed this appeal for enhancement of the amount of compensation awarded by the Motor Accidents

Claims Tribunal, Jabalpur, in Motor Vehicles Case No. 90/79, decided on 21-4-1980. The respondents 1 and 2 have also filed cross-objection

and pray for dismissal of the claim in entirety.

2. The claim of the appellant Mst. Munnibai and her minor son Lal Singh was that they were the dependents and are the legal representatives of

late Nawabsingh. On 19-7-1977, Bus No. C.P.J. 3424 belonging to the respondent No. 1, was driven by the respondent No. 2, and was insured

with the respondent No. 3. About 15 miles away from Shahpura to Jabalpur, the respondent No. 2 tried to take-over another bus belonging to

Sharadnarayan and driven by Kewal son of Tulsiram (D.W. 5). The deceased was going towards Shahpura from Jabalpur on a bicycle who was

dashed by the bus of the respondent No. 1 and was killed in the said accident. Nawabsingh was going on his left side of the road.

3. The respondents 1 and 2 have denied that the driver was rash or negligent and the accident took place due to the respondent No. 2 Man

singh"s rash and negligent driving. The Tribunal found as a fact proved that the respondent No. 2 was. driving the bus rashly and negligently.

4. The respondents alleged that it was, in fact, Nawabsingh who came all of a sudden on the road in front of his bus; hence, the respondents are

not responsible for the accident which had taken place.

5. It is not disputed by the respondents that late Nawabsingh was hit by the vehicle belonging to the respondent No. 1 and driven by the

respondent No. 2. It is, therefore, for the respondents to explain as to how the accident took place. Argument of the learned Counsel for the

respondents is that P.W. 8 Panchamsingh, who was admittedly a cleaner in the Subhash Bus Service, is not a truthful witness and should be

disbelieved. The argument is devoid of substance. Firsty because the witness had given the correct account of the accident and the alleged

contradictions in Ex. D-l (portions marked A-to-A and B-toB) do not render him unreliable so far as the manner in which the accident took place

is concerned. The witness had stated in Criminal Case No. 369/77, on 29-12-1978, in the Court of Kumari Nirmala Thakur, Judge-Magistrate

First Class, Jabalpur as under:

Samne vali gadi ne hamaree bus ko aage jane ke liye said dee thee. Hamaaree gadi us gadi ko paar karne ke liye aage jaane lagi to usi samay wah

cycle wala jise pahle wali gadi ne said dee thee saamne aa gaya aur accident hua.

The contradiction, which is pointed out, is that --""Maine Magistrate ke yaahan aisa nahin kahaa ki Sharadnarayan bus ne Subhash bus ko said dee

thee.""This slight discrepancy in the statement of this witness does not render him unreliable. In the same manner, portion marked B-to-B in the said

criminal case, is also as under:

Chunki wah ekdam se saamne aa gaya thaa.""In our opinion, the Tribunal committed no error in relying on the statement of P.W. 8 Panchamsingh.

6. The respondents have examined Mansingh (D.W 2) and Kewal son of Tulsiram (DW 5) (the driver of the other bus). The statements of both

these witnesses, when compared, would show that all of them are giving the similar version of the accident.

7. The statements of DW 5 Tulsiram Kewal son of Tulsiram, before the learned Tribunal, are as under:

Meree bus ke peeche Subhash bus thee. Subhash bus waale ne horn dekar mujhse said maangee thee to maine said dee thee. Dus pandrah kadam

tak gadi ek taraf ko thee. Maine dekhaa ki ek cycle wala aa rahaa thaa. Wab sarak ke beech main chal rahaa thaa. Subhash bus peeche aa rahee

thee. Maine accident nahin dekhaa. Jab Subhash Bus Service waale ne said maangee to maine said de dee tathaa kuch door tak said dee thee. Jab

said dene par Subhash Bus waale naheen aaye to maine sarak par gadi kar lee.

8. From the statements of all these witnesses, it is clear that the deceased was coming from Jabalpur to Shahpura side and was visible to the driver

of the bus of Sbaradnarayan. It is not possible that the respondent No. 2 would not have seen the deceased on the road. He had been eager to

take over the bus of Sharadnarayan, and, in that effort, he must have driven his vehicle at a very fast speed. He was unable to control the vehicle,

and, in that effort, had knocked the cycle rider. The learned Judge of the Tribunal appears to have committed no error in holding that the

respondent No. 2 was driving the vehicle rashly and negligently. Had he not attempted to take over the bus of Sharadnarayan at that spot, the

accident would not have taken place. When the cycle rider was coming from the front, he should have restrained himself from attempting to take

over the bus of Sharadnarayan. We, therefore, confirm the finding of the learned Tribunal and hold that the respondent No. 2 was driving his bus

rashly and negligently.

9. The deceased was doing the business of milk vendor. He was earning Rs. 15/- to Rs. 20/- per day. Thus, his monthly income was about Rs.

450/- (may be something more than that). The learned Judge of the Tribunal has estimated the contribution to the dependents by the deceased to

the extent of Rs. 150/- per month, i.e., about Rs. 1800/- per annum. Relying on the case of Smt. Vidya Devi and Another Vs. Madhya Pradesh

State Road Transport Corporation and Another, , a multiplier of 18 was suggested, but, in the same paragraph, the learned Judge of the Tribunal

arbitrarily applied the multiplier of 15. This apparently is improper. He should have applied the multiplier of 18 only and there should not have been

any deduction from that amount on the ground of lump sum payment. The multiplier of 18 itself takes into consideration all such contingency,

uncertainty and also the lump sum payment. The amount of compensation, therefore, by applying the multiplier of 18, would be Rs. 32,400/-. The

learned Tribunal has awarded Rs. 1,000/- as general damages, but has not allowed any expenses for taking the dead body to the hospital on

tempo and, then, to the village where funeral was performed In our view, an amount of Rs. 5,000/- should have been awarded under the head of

general damages. In this view of the matter, we modify the amount of compensation awarded by the Tribunal and hold that an amount of Rs.

37,400/-(Rupees Thirtyseven Thousand Four Hundred) should be awarded as total compensation to the claimants. Out of the total amount of

compensation, half shall be deposited in some Nationalised Bank for a fixed period of five years. The rest of the amount shall be paid to the

claimants. The respondents shall pay interest on the amount of compensation awarded by us at 6% per annum from the date of institution of the

claim petition till the realisation of the amount. The respondents shall also pay the costs of the appellant in proportion to the amount awarded by us

and shall suffer the costs incurred by them. Counsel''s fee as per schedule, if certified.

10. Cross-objection filed by the respondents 1 and 2 is dismissed with costs.