(1980) 01 MP CK 0010

Madhya Pradesh High Court

Case No: M.F.A. No. 293 of 1976

Rajat Kumari and Another		APPELLANT
	Vs	
State of Madhya Pradesh and Another		RESPONDENT

Date of Decision: Jan. 3, 1980

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110D

Citation: (1982) ACJ 359

Hon'ble Judges: M.D. Bhatt, J; J.S. Verma, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.D. Bhatt, J.

This is the appeal of the claimants u/s 110-D of the Motor Vehicles Act against the dismissal of their claim for the compensation amount of Rs. 2,70,800/- on account of the death of P.W.D. Overseer, Digambar Mishra in the accident from the truck owned by the Respondent No. 1 State and driven rashly and negligently by the Respondent No. 2, driver Shivnarain alias Bahadur (hereinafter referred to as ''Shivnarain'').

2. Digambar Mishra, now deceased, was a confirmed overseer in the Irrigation Department of the Respondent No. 1 at the relevant date of the accident, i.e., on 26.3.1973. On the said date, he was going to the site of duty in the Government truck No. MPZ 3393 owned by the Respondent No. 1 State and driven by No 2, Shivnarain. At about 4.30 a.m. on the Raipur-Kharsia road, 14 miles away from Raigarh, the truck in question went off the road on its left side and rested with a tilt on the embankment of a field beyond a nali. Digambar Mishra who was sitting on the front seat on the left side of driver, got thrown out and he died on the spot. He had several injuries on his person, the prominent being the fracture of the skull, the

fractures of the 3rd, 4th and 5th ribs of the left side and the 1st rib of the right side and fracture of the right mandible bone.

3. According to the claimants, the death of Digambar Mishra was due to the accident from the truck, driven rashly and negligently by the truck driver, viz., Respondent No. 2 Shivnarain. Digambar Mishra at the time of accident and death, was 34 years of age with sound health and physique. He was in the pay scale of Rs. 170-350, revised subsequently to Rs. 400-675. His monthly salary, including dearness allowance was Rs. 461.00 (Rs. 265/- and dearness allowance Rs. 196/-), but on revision, it came to be Rs. 475/- p.m. It was urged that he would have normally earned his increments till his retirement at 58. Being a technical hand, he would have further earned, at least Rs. 200/- per month after retirement till his death, the normal expectancy of life in the family being 80 years. The deceased''s widow, his parents and his younger brothers and sisters were urged to be the dependents of the deceased. In all, accordingly, total compensation amount of Rs. 2,70,800/- including the general damages of Rs. 50,000/- were claimed against the Respondents.

4. Respondent No. 2 Shivnarain, the driver of the truck, remained ex-parte before the Tribunal. The Respondent No. 1 State denied the claimants'' claim in toto; and refuted principally any negligence and rashness on the part of the truck driver. Even the accident from the said truck was denied.

5. The learned Tribunal, in the light of evidence as adduced, held that the factum of the truck-accident and the death of Digambar Mishra resulting in the said accident were not proved; and as such, there was no question of payment of any compensation. Even otherwise also, considering the circumstances that Respondent No. 1 State had paid Rs. 2,706/- to the family of the deceased and was paying Rs. 60/- per month as the family pension to the deceased''s widow and that the widow as well as the father are presently having certain regular monthly income from their respective vocations, there was no case for payment of any compensation to the claimants. Accordingly, the claim petition was dismissed. Hence, now, the claimants'' present appeal.

6. The learned Counsel for the Appellants-claimants has urged before us that despite the fact that there was no eye-witness to prove the circumstances of the accident, the documents on record viz., Dehati Nalsi (Ex.A.4), general dairy report (Ex. P.3), first information report (Ex.P.1) and the post-mortem report (Ex.P.2) when read and appreciated together are sufficient in themselves, to prove the death of Digambar Mishra resulting from the accident from the truck, driven rashly and negligently by the truck driver. Location and situation of the truck immediately after the incident, are stated to be clearly suggestive of the truck driver''s negligence, on the maxim res ipsa loquitur. It is hence, urged, that the claimants could not be denied the compensation, as claimed.

7. We have gone through the Tribunal''s order, dismissing the claim of the Appellants. The learned Tribunal, after discussing the evidence adduced, is found to have come to the conclusion that it was not proved that the deceased Digambar Mishra was the occupant of the truck and further that he had met his death in the accident caused by the truck and more so, due to its being driven rashly and negligently.

8. On scrutiny of the record, it is found that the truck driver, who was one of the non-Petitioners in the Court below had been proceeded ex-parte and the Respondent No. 1 State alone had filed its reply refuting all the material allegations in the claim petition. The non-Petitioners adduced no evidence before the Tribunal; and the only evidence produced, was the one, adduced on the part of the Petitioners? claimants. No doubt, no eye-witnesses of the accident as it had occurred in the early hours of the morning; and naturally, bence, no eye-witnesses except the occupants of the truck could normally be available to throw light on the circumstances of the accident. The truck driver would have been the best witness. Then again, overseer Ghanshyam Saha who was the other occupant of the truck sitting in between the truck driver and the deceased at the relevant time, could have been another good witness on the point. Ghanshyam Saha, being an overseer and in the employ of the Respondent No. 1 State could have more conveniently been examined by the Respondents rather than by the claimants. His non-examination in the case will lead to adverse inference against the Respondents. Non-examination of the truck driver Shivnarain too by the Respondents eqully raises an adverse inference against them.

9. Any way, material on record is more than sufficient to establish that Digambar Mishra had died as a result of the accident caused by the said truck owned by the Respondent No. 1 State. The deceased''s brother Bhuvneshwar Mishra (A.W. 6), who had reached the place of accident just some time after, had seen the truck standing in a tilted position against the embankment of an agricultural field across the nali. The left front door of the truck was open at the relevant time. This fact is substantially corroborated in a large measure by the copies of the F.I.R. (Ex. A-I), Roznamcha Sanhs (Ex-A-III) and Dehati Nalishi (Ex. A-IV). The post-mortem report (Ex. A-II) also shows multiple antemortem injuries on the person of the deceased. As per the autopsy surgeon, the cause of death was shock and haemorrhage due to these multiple injuries. All these circumstances speak for themselves and indicate that the truck had left the road and the side path altogether; and after crossing a side, nali beyond the road, had come to rest in a tilting position against the embankment of a field. The left front door of the truck must have jerked open under the impact; and the deceased must have fallen out from his front seat and must have thereafter sustained injuries either due to fall or due to his being crushed against some part of the truck. It has been held in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another,

The normal rule is that it is for the Plaintiff to prove negligence but as in some cases considerable hardship is caused to the Plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the Defendant who caused it, the Plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the Defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purpose of the words res ipsa loquitur is that the accident speaks for itself or tells its own story.

Similar view has recently been reiterated by our own High Court in Ramesh Kumar v. Gadarai AIR 1979 M.P. 34 on the strength of the above Supreme Court decision.

10. The circumstances of the present case clearly warrant the application of this principle of res ipsa loquitur, because the circumstances of the accident were solely within the knowledge of the Respondents, more particularly, of the Respondent No. 2 Shivnarain driver and could not possibly have been in the knowledge of the Appellant-claimants who are simply the legal representatives of the deceased.

11. In The Krishna Bus Service Ltd. Vs. Smt. Mangli and Others, also, the Supreme Court is found to have applied the maxim res ipsa loquitur in the like circumstances where the driver of the bus was not produced to explain the relevant facts and circumstances within his special knowledge as to why the bus overturned as such, the driver was held to have failed in rebutting the presumption of negligence that had arisen from the manifest circumstances of the case.

12. In the instant case also, the maxim is obviously attracted because of the failure of the Respondents to produce the truck driver to explain the facts and circumstances within his special knowledge as to how and why the truck in question had left the road altogether which normally does not happen . and why it was resting in a tilting position against a field-embankment, after jumping over a nali, far away from the main road or its side-walk. Accordingly, applying the maxim of res ipsa loquitur, we are of the view that the Respondent No. 2 truck-driver Shivnarain had caused the accident resulting in the death of Digambar Mishra, by his negligence in driving the said vehicle.

13. Next, now, is the vexed question of the quantum of compensation. The Hon''ble Judges of this High Court in Fateh Narain Hajela Vs. Rawal Singh and Others, , have reiterated the general principles governing the award of damages on the strength of the Supreme Court''s decision on the subject, as reported in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others,) and Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958 A.C.J. 179 (S.C.). These general principles, well settled as they are, may be briefly stated as under:

(i) When the Court awards damages to the dependents for death due to negligence, it awards one lumpsum, calculated by taking the yearly pecuniary loss and multiplying it by the number of years'' purchase.

(ii) It does not divide into two parts, such as special damages upto the date of trial and future loss after the date of trial. The Court treats it as damages inflicted once and for all at the time of accident.

(iii) It has to follow the rule of basic figure, a certain number of years'' purchase and allowance for lumpsum payment.

(iv) If the period is a long one, the ''multiplier'' will be much smaller than the number of years, even where the contingencies which are allowed for, are of small account. The reason is that while in so far as the lumpsum of damages is still unspent, it will be earning interest and the damages and interest together will be adequate to last out for the period. The reason is that prudent person receiving a lump-sum, to make good his loss over a period is expected to invest it and to use it up gradually.

(v) The sum to be awarded as damages should be equal to the cost of purchasing an annuity of the relevant amount for the relevant period.

Now, applying the above principles to the instant case, it may be observed that Digamber Mishra, now deceased, at the relevant time of the accident, was drawing a monthly salary of Rs. 461/-. He was 34 years of age and had 24 years more to go, to attain the superannuation age of 58. Considering the large number of dependents of the deceased''s family and after giving due weight to the evidence adduced on the side of the Appellants-claimants, we are of the view that the deceased must have been spending at least Rs. 350/- per month, on the maintenance and upkeep of his wife and other members of his family; the remaining part of his salary being actually spent upon his ownself. Thus, in the instant case, it appears to be ''fair and just'' to treat Rs. 350/- p.m. as the estimated amount of loss to the dependents due to the death of Digamber Mishra.

14. In determining a proper multiplier, the reasonable test, in our opinion, appears to be to take the number of years of the expected useful life of the deceased as the guiding factor, more so, where the deceased is an employee in service who is likely to continue to work till his retirement age, had not Digamber Mishra died, he would have retired at the age of 58 and thus, had 24 years of expected useful life. Accordingly the estimated amount of loss to the dependents for the next 24 years of expected useful life of the deceased, on calculation, works out to be Rs. 1,00,800/- (350 12 24). Now, fair and just compensation can be worked out after deducting from the above figure, so obtained, the benefits received by the family of the deceased and also after making further deduction for lumpsum payment of the accelerated amount to the dependents. Evidence adduced on the side of the Appellants-claimants and in the absence of any rebuttal thereof, we feel that the following benefits which have already been received or being received by the dependents, needs to be deducted.

(1) D.C.R. Gratuity Rs. 1.800/-

(2) Family pension to the deceased''s widow per mensum Rs. 90/-

(3) Salary of the deceased widow in the present employment as teacher per mensum Rs. 50/-

(4) Pension of the deceased''s own father Narsing Mishra as school teacher per mensum Rs. 60/-

Thus, two pensions, i.e. of the widow and of the deceased''s father and the present monthly income of the deceased''s widow in her present employment total up to Rs. 200/- p.m. (Rs. 90/-, Rs. 60/-, Rs. 50/-). For the next 24 years of expected useful life, it works out to Rs. 57,600/-. Adding the D.C.R. Gratuity Rs. 1,800/-, the total comes to Rs. 59,400/-. Thus, the amount of compensation payable, would become Rs. 41,400/- (i.e., Rs. 1,00,800/- minus Rs. 59,400/-). Out of this assessed amount, it would also be desirable to make further deduction for accelerated lumpsum payment which, in our view, should be 1/6th of the amount assessed i.e. Rs. 6,900/-; and thus, the net compensation payable, would work out to be Rs. 34,500/- (Rs. 41,400/- minus Rs. 6,900/-). This amount, on the facts and circumstances of the case, appears to us to be the ''just and fair'' compensation even after taking into account the circumstances that the prudent person receiving a lumpsum to make good his loss over a period is expected to invest it and to use it up gradually; and that, the sum awarded as far as possible, has to be equal to the cost of purchasing an annuity of the relevant amount for the relevant period.

15. In the result, thus, setting aside the order of the learned Tribunal, we allow the claimants''s appeal and award them the total compensation amount of Rs. 34,500/- against the Respondents, with interest thereon at 6% per annum from the date of the claim-petition till the date of realisation of the decretal amount. The Respondents shall bear the costs of the Appellants-claimants as incurred in the proceedings before the Claims Tribunal and also in this Court and shall further bear their own costs throughout. Counsel''s fee Rs. 500/- allowed, if certified.