(2006) ACJ 2517 : (2006) ILR (MP) 383 : (2006) 1 MPHT 478

Madhya Pradesh High Court

Case No: Miscellaneous Appeal No. 1376 of 2004

Dewakar Shukla and Others		APPELLANT
	Vs	
Ashok Thakur and Others		RESPONDENT

Date of Decision: Oct. 29, 2005

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 163A, 166, 173

Citation: (2006) ACJ 2517 : (2006) ILR (MP) 383 : (2006) 1 MPHT 478

Hon'ble Judges: S.S. Dwivedi, J; K.K. Lahoti, J

Bench: Division Bench

Advocate: Pramod Thakre, for the Appellant; None for Respondent No. 1, Shreekant Dubey and Ajit Agrawal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.S. Dwivedi, J.
The appellants/claimants have preferred this appeal u/s 173 of the Motor Vehicles Act, 1988, (hereinafter referred to as

M.V. Act for brevity). Feeling aggrieved by the award dated 27-4-2004 passed by the 5th Additional Motor Vehicles Accident Claims Tribunal,

Chhindwara in Claim Case No. 26/2002 whereby the appellants claims for Rs. 12,00,000/- compensation amount has been dismissed.

2. Brief facts of the case which are necessary for the decision of this appeal are that the deceased Sanjay @ Radhey Shayam Shukla was the son

of the appellant Nos. 1 and 2 and the husband of the appellant No. 3 and father of the appellant No. 4. On 2-5-99 deceased Sanjay @ Radhey

Shayam was travelling in a Mini Bus bearing No. M.P. 20 C 9907 going to Narsinghpur. Aforesaid Bus was driven by respondent No. 1, the

registered owner of the Mini Bus was respondent No. 2 and it was insured with the respondent No. 3 New India Insurance Co., Jabalpur. On the

way near Village Kundali, the driver of the bus driven the bus rash and negligently. Therefore, this bus turned and fell down on the road thereby the

deceased Sanjay @ Radhe Shayam sustained grievous injuries on his body and he immediately admitted in the Hospital at Narsinghpur. Sanjay

died on the same day due to the grievous injuries caused to him in this accident. Deceased Sanjay @ Radhe Shayam was running a Auto Spare

Parts shops at Harie, earning Rs. 6000/- per month and maintaining his family and the appellant/claimant who are the dependents of the deceased.

The police had also registered a criminal case against the respondent No. 1, the driver of the vehicle and filed a charge-sheet against him in the

concerned Court at Narsinghpur. On these allegations the appellants being the legal heirs and the dependent of the deceased Sanjay filed a claim

petition u/s 166 of the M.V. Act before the 5th Additional Member Accident Claims Tribunal, Chhindwara and claimed Rs. 12,00,000/- as

compensation amount from the respondents. After recording of the evidence and hearing the parties, learned Member of the Claims Tribunal vide

impugned award dated 27-4-2004 came to the conclusion that the appellant had failed to prove that this accident occurred due to rash and

negligent driving of the respondent No. 1, the driver of the vehicle, and dismissed the claim petition. Feeling aggrieved by the aforesaid impugned

award the appellants have preferred this appeal.

3. Learned Counsel for the respondent No. 3 supported the impugned award and prayed for the dismissal of the appeal. Respondent Nos. 1 and

2 remained absent in this appeal.

4. It is submitted by the learned Counsel for the appellants that the appellants had produced all the necessary documents before the Claims

Tribunal which proved that this accident occurred due to rash and negligently driving of the vehicle by respondent No. 1 and this documentary

evidence has not been rebutted by respondent No. 1 the driver of the vehicle. Therefore the learned Tribunal has committed error in dismissing the

claim petition filed by the appellant.

5. First point for consideration before us is as to whether this accident occurred due to rash and negligently driving of the vehicle by respondent

No. 1. For this purpose the appellant Gulab Bai A.W. 1 who is the mother of the deceased stated before the Tribunal that his son Sanjay @

Radhey Shayam was travelling in a bus and due to rash and negligent driving of the driver the bus turned turtle near Village Kundali and thereby his

son Sanjay sustained grievous injury and died in the Hospital. It is true, that the aforesaid Gulab Bai was not present at that time of the accident on

the spot. Same is the statement of Smt. Sangeeta Shukla (A.W. 2) who is the wife of the deceased. Normally at the time of accident these

appellants could not be presumed to be present on the spot. They came to know about the fact after accident. Therefore, they could not be the

eye witness of the incident. But the appellant/claimant submitted the document Ex. P-l which is the First Information Report which had been lodged

at Police Station of Harie; wherein it is stated that Mini Bus No. M.P. 20 C 9907 which was driven by the respondent No. 1 rash and negligently,

the bus turned turtle and caused grievous injuries to the deceased Sanjay @ Radhe Shayam. This First Information Report may be looked as a

corroborative piece of evidence and facts mentioned in this FIR are not rebutted by the concerned driver of the vehicle. It is apparent on perusal of

the Lower Courts record that the driver of the vehicle respondent No. 1 had no courage to appear before the Trial Court to re-butt the facts that

he was not driving the vehicle rash and negligently.

6. The doctrine of res ipsa loquitur can be applied in this case where the claimants were not present on the spot at the time of accident and brought

the circumstances in which accident occurred then there was heavy burden on the driver of the vehicle to prove that he was not driving the vehicle

rash and negligently or to explain circumstances in which accident occurred. And if the driver has not examined himself in the Court that adverse

inference may be drawn against the driver and may be presumed that he was driving the vehicle rash and negligently. In the present case it is clear

that the driver had not examined himself and not explain the circumstances under which the accident took place resulting death of Sanjay. In such

cases in absence of any explanation about the accident on the part of the driver the presumption has to be drawn that the accident was caused due

to rash and negligently driving of the vehicle by the driver.

7. On this proposition we place our reliance to the decision of the Apex Court rendered in Pushpa Bai Purshottam Udeshi v. Ranjit Ginning and

Pressing Co. 1977 ACJ 343, in which Their Lordships held thus :--

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 can

not 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 purport of the words res ipsa loquitur is that the accident ''speaks for itself or tells its own story. There are cases in

which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to

establish that the accident happened due to some other cause than his own negligence. Where the maxim"" is applied the burden is on the defendant

to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote

negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the

accident is such as in ordinary course of things does not happen if those who had the management used proper care.

8. This view has also been taken by the Division Bench of this High Court in a case Sitabai and Others Vs. Ishak Hussain and Another,

9. When the appellant prima facie proved that this accident occurred and Sanjay @ Radhe Shayam died due to this accident than on the basis of

the doctrine of "res ipsa loquitur" the driver of the vehicle respondent No. 1 could be held liable and presumption can be drawn that he was driving

vehicle rash and negligently in the absence of his statement.

10. Therefore, in our considered opinion the appellants/claimant had proved by the evidence that this accident occurred due to rash and negligent

driving by the respondent No. 1.

11. One important point has also brought to the notice by the learned Counsel for the respondent that in First Information Report the number of

vehicle is mentioned as M.P. 20 E 9907 while cover note of Insurance Policy show the number of the vehicle M.P. 20 C 9907. Therefore, on the

basis of this mistake the respondent No. 3 Insurance Co. is not liable for the payment of the compensation amount in this case. This appears to be

a clerical mistake in writing the First Information Report Exhibit P-l. The concerned vehicle M.P. 20 C 9907 had been seized from the possession

of the respondent No. 1. The respondent No. 1 has been charge-sheeted for the driving of this vehicle.

Therefore, the aforesaid clerical mistake of wrong mentioned word "E" instead of "C has no ground to disbelieve the appellants case.

12. The Apex Court in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC), held thus :--

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.

13. In the same circumstances a Division Bench of the High Court of Allahabad in the case U.P. State Road Transport Corporation Vs. Raj

Pratap Singh and Another, while discussing the same type of mistake about the wrong mentioning of the registration number of the vehicle held as

under :--

Learned Counsel for the appellant (F.A.F.O. No. 527 of 1985) urged that there is no evidence to prove that the UPSRTC owns any bus bearing

No. UTB 2378, which is said to have caused the accident in question and the compensation should not have been awarded as against the

appellant. In this regard, one has always to keep in mind whether the actual accident took place on the said date, time and place or not, which led

to the death of the deceased and secondly, whether the number of the bus recorded and relied by the claimant was true or not. Sometimes, it may

be when the accident takes place one is certain that the accident has taken place and time and on the date by a particular vehicle, but may miss to

correctly record the number of vehicle. If such number is wrongly recorded it would deprive the claimant of the benefit and entitlement under the

Act. One may broadly record the accident whether by a bus, by a truck, by a jeep, by a car and if otherwise on evidence it is possible to conclude

that the accident did take place with such vehicle as described but only if there is an error in recording the number of the vehicle then that by itself

should not disentitle the claimant of his legitimate claim. However, it is the duty of the Court to scrutinize the evidence on record in such cases with

special care for drawing an inference that irrespective of the incorrect recording of the number, the accident did take place from the vehicle

belonging to the proprietor or owner of a particular make.

14. Therefore on the basis of the aforesaid principle laid down by the Apex Court and by the Division Bench of Allahabad High Court the

aforesaid mistake in wrong mentioning of word the E instead of C in the First Information Report did not effect the merits of the case and by this

mistake it can not be presumed that the offending vehicle of this accident was not belonging to respondent No. 2.

15. Therefore, on the basis of aforesaid discussion we are of considered opinion that this accident occurred due to rash and negligently driving of

the vehicle M.P. 20 C 9907 by respondent No. 1 in which the deceased Sanjay @ Radhe Shayam sustained grievous injury and died in the

accident.

16. The second point for consideration is to what will be of the just and reasonable compensation amount which appellants are entitled to get. For

this purpose the appellant Gulab Bai A.W. 1 stated in her statement that her son deceased Sanjay @ Radhe Shayam was running a Auto Parts

shops business in Harie and was earning Rs. 6000/- per month. This statement is further supported by the statement of Sangeeta A.W. 2 wife of

the deceased. Shiv Prasad A.W. 3 who is a mechanic and regularly purchased the Auto Parts from the deceased''s shop. Prima facie aforesaid

statement of the appellants can not be disbelieve. We can ascertain average income of the deceased @ 3000/- per month out of which one third of

the amount may be deducted towards the expenses of the deceased so the monthly dependency would come to Rs. 2000/- per month and the

annual dependency come to Rs. 24,000/- per annum. At the time of the incident deceased Sanjay @ Radhe Shayam was aged about 25 years.

According to the schedule of Section 163A of the M.V. Act multiplier of the it may be applied. Therefore total compensation amount can be

assessed 24,000/- multiply by 17 which comes to Rs. 4,08,000/-. The appellant No. 3 is the wife of the deceased whose age was about only 22

years at the time of the incident, who lossed her husband at this young age. Therefore, custorium amount of Rs. 10,000/- may be allowed as

compensation to the appellant No. 3. Similarly for the loss of the estate the appellants may be awarded Rs. 10,000/- and for the expenses of

funeral etc. the appellants are entitled to get the amount of Rs. 2000/-. On calculating aforesaid amount the total compensation amount comes to

Rs. 4,30,000/- which the appellants are entitled to get.

17. Therefore, as discussed above the learned Tribunal had committed an error in dismissing the claim petition of the appellants/claimant. Thus the

impugned award is liable to be set aside and it is held that the appellants/claimant are entitled to get the compensation amount of Rs. 4,30,000/-

from the respondents jointly and severally.

18. Consequently, the appeal is allowed, the impugned award is set aside and held the appellants are entitled for Rs. 4,30,000/- as compensation

amount from the respondent jointly and severally with the interest @ 6% per annum from the date of filing of this claim petition, ie., from 27-10-99

till the realization of the amount. The appellants are also entitled to get the cost of this appeal. Counsel fee Rs. 1000/- if certified.

19. This amount Rs. 4,20,000/- with interest may be divided in between the appellant to the ratio that 30% of the total amount be distributed to the

appellant Nos. 1 and 2.40% compensation amount with Rs. 10,000/- of consortium amount be given to the appellant No. 3 who is the wife of the

deceased and remaining 30% amount will be given to the appellant No. 4 who is the minor son. It be deposited in the Nationalized Bank for seven

years in the name of minor under the guardianship the appellant No. 3. Similarly 75% of the compensation amount which is given to the appellant

No. 3 be deposited in the name of appellant No. 3 in the Nationalized Bank for three years and quarterly interest may be withdrawn by the

appellant No. 3 to meet out her day to day expenses. The appellant Nos. 1 and 2 may also withdraw 75% of the compensation amount which is

given to them remaining shall be deposited in T.D.R. for a period of one year or for a more period if desired by appellant Nos. 1 and 2.