Pushpa Rani Vs. Anokha Singh Etc.

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Court : Delhi

Decided On : May-19-1975

Reported in : 1976RLR52

Judge : B.C. Misra, J.

Acts : Motor Vehicles Act. 1940 - Sections 81 and 110A

Appeal No. : First Appeal No. 167 of 1967

Appellant : Pushpa Rani

Respondent : Anokha Singh Etc.

Advocate for Pet/Ap. : B.R. Sabharwal and; G.L. Seth, Advs

Judgement :

B.C. Misra, J.

(1) Appellant I's husband on 1-7-63 at 10.45 p.m. was driving his m/cycle on S. Patel Road. A truck, whose driver was Respdt. 1 and owner Respdt. 2, was standing on the road as its axle had broken. Though its front left wheel was on Kacha path its near portion blocked most of the left half of the road. The deceased was carrying 2 children. M/Cycle dashed against the truck and all the 3 died. Claim was filed u/s 110 of M.V. Act. Tribunal held that deceased was guilty of contributory negligence and wag entitled to 1/3rd of the damages. Appellants appealed to High Court.]. Para 7 onwards, Judgment is :

(2) The question that arises for consideration is whether the finding of the court below that the deceased contributed to the neglience is correct. The Tribunal has repelled the contention of the respondents before me that the deceased was drunk at the time of accident. The Tribunal has found that there was not an iota of evidence on the record before it to support this contention. The learned counsel for the parties have failed to bring to my notice any evidence which has been ignored by the Tribunal below, as such I endorse the finding that the deceased was at the time of the accident not drunk. The Tribunal below has discussed the contributory negligence of the deceased on two grounds; one is that the deceased was carrying two children on the motor cycle, which was not permissible under section 85, but the Tribunal has held that this has not in any way contributed to the causing of the accident. It is true that the deceased could carry only one person on the pillion seat and taking another child on the front seat was not permissible. But, this breach of the law did not contribute to the accident, since it has not been suggested or proved that the deceased had lost balance of the motor cycle or was unable to control it on account of

the excessive number of passengers. The view of the Tribunal below on this point is correct.

(3) The other ground, which found favor with the Tribunal below was that a person driving a motor cycle at night should drive it at such a speed that he can pull it up within the limits of the vision ; and if he collided with the truck, either he was driving negligently fast or he was not keeping good look out and in either event he was also negligent. The Tribunal has rejected the statement of the Wing Commander, Lefantane to the effect that the motor cycle of the deceased was being driven at the speed of 15 miles per hour. On this basis the Tribunal has found the contributory negligence of the deceased proved.

(4) Contributory negligence was defined by the House of Lords in Swadling v. Cooper, 1931 A.C. 1, as the rule that although there may have been negligence on the part of the plaintiff, yet unless he might, by the exercise of ordinary care, have avoided the consequences of the defendant's negligence, he was entitled to recover ; but if by ordinary care he might have avoided them, he was the author of his own wrong. Again in Caswell v. Powell Duffryn Associated Collieries Limited, 1940 A.C. 152, the Judicial Committee observed that strictly speaking the phrase 'contributory negligence' was not a very happy method of expressing an act of the employee which might relieve the employer from liability. Probably the phrase 'negligence' materially contributing to the injury would be more accurate, but if the word 'contributory' be regarded as expressing something which was a direct cause of the accident either phrase was accurate enough and the less accurate phrase was sanctioned by the long usage. In Nance v. British Columbia Electric Railway Company Ltd. 1951 A.C. 651, the Judicial committee observed that when negligence was alleged on the basis of an actionable wrong, a necessary ingredient in the conception was the existence of a duty owed by the defendant to the plaintiff to take due care, was of course, indubitably correct; but when contributory negligence was set up as a defense, its existence did not depend on any duty owed by the injured party to the party sued, and all that was necessary to establish such a defense was to prove to the satisfaction of the jury that the injured party did not in his own interest take reasonable care of himself and contributed by this want of care, to his own injury; for when contributory negligence was set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved was that, where a man was part author of his own injury, he could not call on the other party to compensate him in full.

(5) In Halsbury's Laws of England, third edition, Volume 88, paragraph 92, on pages 87 to 89, the rule has been laid down thus :

'INan action for injuries arising from negligence, it was a defense at common law if the defendant proved that the plaintiff, by some negligence on his part, directly contributed to the injury in the sense that his negligence formed a material part of the effective cause there of. When this is proved the plaintiff's negligence is said to be contributory. It is now enacted by the Law Reform (Contributory Negligence) Act, 1945 that where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage is not to be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof are to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage'.

(6) With regard to the application of the plea of contributory negligence the statement of law in paragraph 93 is that where the defendant is negligent and the plaintiff is alleged to have been guilty of contributory negligence, the test to be applied is whether the defendant's negligence was nevertheless a direct and effective cause of the misfortune. The existance of contributory negligence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish a plea of contributory negligence is to prove that the injured party did not in his own interest take reasonable care of himself and contributed by his want of care to his own injury. The principle involved is that where a man is part author of his own wrong, he cannot call on the other party to compensate him in full. The standard of care depends upon foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent man, he might hurt himself. The plaintiff is not usually bound to foresee that another person may be negligent unless experience shows a particular form of negligence to be common in the circumstances. If negligence on the part of the defendant is proved and contributory negligence by the plaintiff is at best a matter of doubt, the defendant alone is liable.

(7) The rule of law has sucinctly been summed up in Halsbury Laws of England and I shall apply it to the facts of the instant case. There is no doubt that if it were found that the deceased had not taken reasonable care of himself in the circumstances of the case, he would be guilty of contributory negligence causing the accident and his estate would have to share the damages. The court below has, however, entered upon the realm of conjectures in the case. The Tribunal has observed that it was the duty of the deceased to stop his motor cycle within the distance of his vision. This is not correct. In Morris v. Lutton Corporation, (1946) 1 K.B. 114, the Court of Appeal observed that there was no rule of law that a person riding or driving in the dark must be held to be negligent if he was driving at such a speed that he was not able to pull up within the limit of bids vision. The excessiveness of the speed has to be determined as a question of fact in the circumstances of each case on the evidence on the record. The only evidence in the instant case consists of the statement of Wing Commander, Lefantane, who in answer to question No. 18 stated that the motor cycle was traveling at about 15 m.p.h. The court below has rejected it as being an estimate but in a matter like this nothing but an estimate could reasonably be expected. This witness has generally been believed by the Tribunal below. He has stated that he did not see the collision, but he was standing outside his house and heard the motor cycle approaching and striking into something and he reached the spot soon thereafter. There is no other evidence of any witness or circumstances to the contrary to indicate that the deceased was driving the motor cycle very fast. The permissible speed for driving the motor vehicles within the Municipal Limits is 30 miles per hour and had the vehicle been moving at the speed of 30 m.p.h when brakes were applied to it, thinking time would cover a distance of 30 feet and breaking distance 45 feet, so it would at least need 75 feet before the vehicle is brought to a stoppage. This is so in the case of good weather, broad day light and a four wheeled vehicle. But if the vehicle is two wheeled, it needs double the distance and in bad wheaher still more (see Bingam's Motor Claims Cases, 7th Edn. at pages 106 and 107) So the overall stopping distance for two wheeled motor cycle in bad wheaher and dark night would be at least double of 75 feet, viz. about 150 feet. Should the speed be 20 miles per hour, then in case of motor car the stopping distance would be 40 feet and for motor cycle 80 feet. It is, thereforee, clear that the motor cycle of the deceased could not be

said to have been driven at an excessive speed, because had it been driven at a speed of about 20 miles per hour, it would in any case need a distance of about 100 feet to come to a halt. Hence, the mere fact that the motor cycle of the deceased struck the rear of the offending truck would not lead to the conclusion that the motor cycle was being driven recklessly or negligently. Reporter. 52 (B.C. Misra, J.)

(8) Moreover, in the claim petition the claimants stated that the night was dark, the road leading from Palam to Delhi (Sardar Patel Marg) was without any lights, the sky was overcast with clouds and it was very dark, and the deceased had to lead his way with the help of his motor cycle light only ; that the deceased was confronted on his way with the blazing lights of the oncoming cars and lorries which paled the light of his motor cycle and that in order to avoid any collision, the deceased kept well towards the left of the middle of the road. In reply, respondents 2 and 3 stated in paragraph 22 that it was admitted that the night was dark and the road at the relevant time was without any lights and the sky was overcast with clouds ; it was also admitted that 'the deceased must be confronted on his way with blazing lights of the oncoming cars and lorries and the same must have paled the light of motorcycle of the deceased. 'They also admitted that the offending truck was standing parked in an unworkable condition. This admission on the part of the respondents 2 and 3 in the written statement finds support from the statement of Wing Commander, Lafantane. In reply to question No. 20, he stated that there were some cars passing on both directions, but he could not say whether any passed immediately before the accident. He further stated in cross-interrogatories in question No. 17 that it was a busy road and there was considerable traffic by day as well as by night. He also stated that he had seen the light of the motor cycle moving through the hedge surrounding his house and that the road was busy and there was considerable traffic arid some cars were passing in both the directions. It is, thereforee, established that in the circumstances of the case, the light of the motor cycle was enough to warn the deceased that obstacle of the offending truck existed on the road before him. Again in a dark night with the sky overcast with clouds with no street lighting. it was certainly the duty and prudent act on the part of the deceased to leave right half of the road for the oncoming traffic and he had to keep himself on the extreme left half of the road, but nine feet out of the total 12 feet width of the said road was covered by the offending truck, which was parked without any rear light or warning. There were oncoming cars and as admitted by the respondents (and in the absence of any evidence to the contrary, we are entitled to rely on the admission of the parties), the deceased was confornted with their blazing lights which paled the motor cycle light. In this situation, the deceased could, by any reasonable care short of miracle, not avoid the accident. thereforee, I hold that the deceased was not guilty of any contributory negligence.

(9) Further, assuming contributory negligence for the sake of arguments, the Tribunal has erred in apportionment. The House of Lords in Miraflores and the Abadess owners of the steam Tankers Miraflores v. owners of the State Tanker George Livsnos and others, (1967) 1 A.C. 672, observed that if the problem were merely a causation..... but the investigation was concerned with 'fault' which included blame worthiness as well as causation, and no true apportionment could be reached unless both those factors were borne in mind. The noble Lord thereafter proceeded to give instructive illustrations of the working of the rule. However, a case very near to facts of the case in hand before me came up before the court of appeal in Brown and another v. Thomson. (1968) 2 All E.R. 708. The facts of that case were that the plaintiffs, consisting of the husband and wife, were injured when the car in which

they were traveling struck a stationary lorry which was wholly unlighted at the rear and which had no reflectors; the accident occurred at 2.45 or 3.00 p.m. on a stretch of road which ran along the fringes of Epping Forest ; at the time there was thin coating of snow on the road, but snow was not falling heavily. The plaintiff's husband was driving the car with dipped headlights ; the last street lamp was some 280 feet away before the place of accident; the husband had seen something looming up in front of him just before the accident occurred, and his car had begun to turn out from the near side kerb before it struck the back of the lorry. The plaintiffs brought an action for damages against the owner of the lorry and the trial Judge awarded to the plaintiff wife 2500 general damages and the court apportioned 20% of the responsibility for the accident to her husband. The defendant appealed against the apportionment of damages and contended that 50% of the responsibility for the accident should have been apportioned to the husband. The court of appeal dismissed the appeal. Lord Justice Winn observed at page 709 that it was essential to compare the fault of each with the fault of the other two and the emphasis is on fault, not solely on causation or damage. There was no doubt whatever that the act of driving into the back of stationary vehicle, the act of driving in such a manner that for one reason or another the driver in this case failed to turn out (since there was no real need for him to stop in order to avoid this lorry) was a high degree potently causative of the collision and of the injuries suffered by the husband and the wife ; equally, of course, it was potently causative of the collision tnat the lorry should have been left there in the position with no light on it, which want very much further than saying that if either of the vehicles had not been there, there would have been no collision. Each of them potently contributed to the causation of the accident; but when one looks at the question of blameworthiness, that it seemed quite plain that the fault of the defendant was very much greater than the fault of the plaintiff husband having regard to the element of blameworthiness was relatively really quite small. The Court of Appeal however, declined to interfere with the apportionment of the damages made by court of the first instance.

(10) In the instant case, in view of the discussion made above, I have found that there was no contributory negligence on the part ofthe deceased. But, if mere failure to pull up the motor cycle in time and avoid the collision be assumed to be contrioutory negligence, I would relying on the aforesaid authority, call it a relatively quite small blameworthiness and could not apportion the responsibility for the damages against the deceased at more than 20%. The finding of the Tribunal placing it at 2/3rd is clearly not sustainable in any event. As a result, I find that the finding of the court below that the deceased was guilty of contributory negligence is not sustainable and is reversed. Consequently, the respondents are liable to pay the whole of the damages that may be determined against them and no amount of damages is to be reduced on account of any contributory negligence.

(11) Before proceeding to discuss the quantum of damages, I wish to consider the objection, of Mr. Seth, counsel for the respondents. His first contention is that the claim application was barred by time. The grounds on which he has based his contention is tnat the claim petition as originally framed had arrayed Amarjit Siagh only as respondent No, 2. Later on, it was found that the truck belonged to a partnership firm known as Amarjit Singh Bhagat Singh, of which Amarjit Singh was one of the partners. The claim petition was, thereforee, amended and the firm was imp leaded as respondent No. 2. The counsel submits that the amendment had been allowed after the period of limitation prescribled by section 110-A of the Act had been expired. This has been discussed by the Tribunal below in answer to issue No. 9. It

has held that Amarjit Singh had been imp leaded earlier and later the firm Amarjit Singh Bhagat Singh had been imp leaded and this was only a case of misdescription and so the petition was within time. Further, following a decision of the Punjab High Court reported as Mehta Goods Carrier (P) Ltd. Delhi v. Darshan Devi and others, , the tribunal condoned the delay against respondent No. 2 and held that the application was within time. It further found that even if the applications were found to be barred by time, it would not make any material difference, since the claim petition against the insurance company and the driver was undisputably within time and the insurance company had insured the vehicle not only against the insured owner, but also against the negligence of the driver, as was clear from clause (3) of section 2 of the Insurance Policy and so the insurance company was liable to indemnify the claim of the claimants against the driver in any event, even without impleading the owner. Mr. Seth has contended that the firm Amarjit Singh Bhagat Singh, which has now been arrayed as respondent No. 2 was a separate legal entity from Amarjit Singh personally, who nad been imp leaded earlier, I am unable to accept the submission. The partnership firm is not a separate legal entity. It is only the compendious name turn the individual partners (see Murli Dhar v. Chum Lal and others. 1970 Rcj 922 (SC). Amarjit Singh, thereforee, remained liable in his individual capacity as well as in his capacity as partner of the firm and the amendment in the description of the firm did not introduce any separate legal entity (see Purushottam Umedbhai and Co. v. M/S Manilal and Sons, : [1961]1SCR982 , and Jai Jai Ram Manoharlal v. National Building Material Supply, Air 1969 Sc 1967). Moreover, I agree with the court below tnat me substitution of the name was a correction of misdescription, as the clai- mants had really intended to implead the owner of the vehicle, and Amarjit Singh was one of the owners, while his partners in the firm were co-owners. Under section 21 of the Limitation Act, if a suit or application has been filed against a defendant and subsequently another defendant is added, it is open to the court to order that the proceedings against the newly added defendant would be deemed to have been commenced on the date of the original petition. Further, the Tribunal below had the power to condone the delay under the proviso to sub-s. (3) of section 110-A of the Act and it has exercised its discretion in the instant case according to the well established principles and no grievance can be made against the same. Mr. Seth. however, has contended that the Tribunal has condoned the delay without any written application of the claimants, Neither section 5 of the Limitation Act, nor the proviso to section 110-A (3) of the Act really requires a written application for the purpose (see Sanwal Das v. Kanhya Lal, 1966 Dlt 421, and Firm Kaura Mal Bishan Dass v. Firm Mathura Dass Atma Ram,). Though written applications are normally filed to move the court to exercise its power to condone the delay, still, it does not debar the court from condoning the delay without any such written application. The matter rested in the discretion of the court, which has been exercised according to law. I do not find any legal infirmity in this part of the order and reject the objection of the counsel for the respondent. I also agree with the Tribunal below when it has held that the delay in correcting the name of respondent No. 2 has not caused any prejudice, since the liability of the insurance company was in terms of the policy still subsisting upon mere proof of negligence of the driver even when only Amarjit Singh had been imp leaded as owner in place of the firm.

(12) The other objection raised by Mr. Seth is ingenious, but not sound. The submission of the counsel is this: Under section 110-A it is provided than an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 110 may be made by the persons mentioned therein and sub-section (1) of section 110 provides that a State Government may.....constitute.....

Motor Accidents Claims Tribunals for such area as may be specified in the notification..... for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles. The learned counsel's argument is that at the time of the accident, the offending motor vehicle had broken down and was standing in an unworkable condition and the same was not in use. The accident bad, according to the counsel, thereforee, rot taken place arising out of the use of the vehicle and as such the claim prefered by the appellants was not covered by section 110 and section 110-A of the Act and so its determination would be beyond the jurisdiction of the Tribunal.

(13) The contention of the learned counsel has been repelled by the court below and in my opinion rightly. The word 'use' occurring in section 110 of the Act has been used in a wide sense. It covers all employments of the motor vehicle on the public places including its driving, parking, keeping stationary, repairing, leaving unattended on the road or for any other purpose. The driver of the offending vehicle had certainly taken out the vehicle and had driven it on the public road and had parked it as its axle had broken down and then left it without reasonable precaution. If a vehicle is being driven and is stopped or parked for being repaired or otherwise, then it cannot be said that the vehicle is not being used Supposing some driver thinks fit to stop a vehicle in the middle of a busy road and to start repairing it or decides to rest in the seat, it cannot be said that he can escape the liability by pleading that at that time the vehicle was not being used.

(14) The counsel has taken me through the various provisions of the Act. where the Act has used diverse expressions, like driving, parking, using, stopping, retraining stationary, etc., But, these expressions are employed when the legislature intended to direct the attention to any particular use, but the expression 'use' occurring in section 110 is similar to the expression occurring in sections 94 and 95 where a mandate is laid down that no person will use a motor vehicle in public place without a prescribed policy of insurance. Section 110 again employs the same expression 'arising out of the use of the vehicle.' The expression is, thereforee, employed in a wide sense and is practically synonymous with bring out a motor vehicle in a public place, and using the public place for the motor vehicle. The condition in which the motor vehicle arrives or is kept and the purpose for which it is being driven or is being kept stationary is not a jurisdictional fact to determine the jurisdiction of the Tribunal to decide the claim, although these questions may or may not have any bearing on the merits of the case. The word 'use' of the motor vehicles occurring in Chapter Viii under the heading 'Insurance of Motor Vehicle Against Third Party Risks', has a wider meaning of plying and not actually plying it for profit. The expression is used in section 110-A in the same sense as it occurs in sections 94 and 95 of the Act under Chapter VIII. The use of the expression 'use' in other sections 123, etc. in Chapter Vi relating to Control of Traffic and at other places derive their meaning in the restricted or wider sense, as the case may be, a cording to the context in which it is used and they do not control or limit the connotation of the expression occurring in section 110 and 110-A of the Act. Mr. Seth has cited the State of Mysore v. Syed Ibrahim, : 1967CriLJ1215 , State of Uttar Pradesh v. Ramagya Sharma Vaidya, : 1966CriLJ79 . Ramakrishna Setty v. State of Andhra Pradesh, : AIR1965AP420 , In re T.V. Moidu and another. Air 1960 Mad 265 and State of U.P. v. Bansraj, : 1959CriLJ248 , on the construction of word 'use'. I have gone through the said authorities. They deal with the expression occurring in the particular context & do not throw any light on the construction of the word occurring in section 110-A or 110 of the Act. I have no hesitation in rejecting

the contention of the learned counsel and affirming the view of the Tribunal below.

(15) With regard to quantum of damages, I endorse the finding of the court below that the parents of the deceased were not dependent on the deceased and they were not entitled to any damages. With regard to the damages payable to the other claimants, I accept the evidence on behalf of the claimants as was accepted by the Tribunal below on the basis of income-tax assessment orders that the income of the deceased from the Tin Printing Factory was Rs. 6,000.00 per annum. The Tribunal below has reduced it by Rs. 3,000.00 on the ground that after the death; the widow continued to get the said income. In my opinion, the Tribunal has fallen into an error. It was open to the court to find out the value of the assets left by the deceased and deduct it from the dependency. But the income of the claimants after the death of the deceased is due not only to the assets of the deceased, but also due to the management of the business by the deceased's wife with the help of Inderjit Chopra, younger brother of the deceased, who stated that the factory was running at the loss. The value of the capital, labour and risk employed by the legal representatives on the work roust be excluded before proposing to reduce the dependency. Income from the business of the factory cannot be equated with the rental income from the realty, nor with fruits from the trees which may be readily available without much labour and risk on the part of the legal representatives The court below in arriving at the dependency ought to have given credit for the personal contribution and efforts of the legal representatives in running the business and earning income out of it. In the absence of any other material on record, I would consider it fit to allow a sum of Rs. 1,000.00 per annum on account of labour, skill and risk of the business incurred by the legal representatives themselves and would thereforee, arrive at the dependency at Rs. 4,000.00 per annum (instead of Rs. 3,000.00. As against this, in agreement with the Tribunal below, I would exclude the amount of Rs. 75 and Rs. 80 per month (or Rs. 1,860.00 per annum) on account of expenditure by the deceased on himself and the deceased children, thus yielding a total of Rs 2,140.00 per annum as dependency. The deceased at the time of his death was 45 years of age and the court below has applied the multiplier of 12. The learned counsel for the appellants has submitted that the deceased had a history of longevity and his parents are still alive and he should, thereforee, be expected to live till the age of 65 years and the computation should have been made for 20 years. But, unfortunately, no evidence has been produced at the trial with regard to the family history and so I am unable to differ from the finding of the Tribunal below and thus the multiplier must remain at 12. The dependency of Rs. 2140.00 per annum multiplied by 12 gives the amount of compensation at Rs. 25,680.00.

(16) The court below has allowed compensation on account of expectation of life at Rs. 2,000.00 on account of husband, Rs. 2,000.00 for the deceased daughter and Rs. 3,500.00 for the deceased son. In my opinion, in the instant case the claimants are not entitled to the aforesaid amounts. Moreover, the amount that is being allowed by me on appeal and is being paid as lump-sum covers all heads of compensation to which the claimants are entitled. The said items are, thereforee, disallowed. The Tribunal below awarded compensation for the death of two children. I do not award it separately and it will be covered by the amount awarded.

(17) The appellants have received a sum of Rs. 2500.00 from the insurance company as claim on the life assurance policy of the deceased. The court below has deducted whole of the said amount as accretion of estate. This could not be deducted as the amount of insurance was payable to the legal representatives of the deceased in any

event and it does not constitute a benefit on account of his death. thereforee, what is to be deducted on account of insurance is the accelration of the payment of the claim and not the whole claim. See Bhagwanti Devi v. Ish Kumar, 1975 Acj 56-1975.RLR.172. I value the acceleration at ten per cent. The deducation on account of acceleration of insurance claim works out to Rs. 250.00. This makes out a net compensation of Rs. 25,430.00, which will be payable to the wife and the two children, appellants herein, in equal shares. The award of the Tribunal below is enhanced to the aforesaid figure of Rs. 25,430.00. The liability of the insurance company will be limited to Rs. 20,000.00 and the balance will be payable by the remaining respondents.