

N. K. V. Bros. (P) Ltd.

Vs

M. Karumai ammal and others

Special Leave Petitions (Civil) Nos. 937-939 of 1980

(V. R. Krishna Iyer, D. A. Desai JJ)

21.03.1980

ORDER

1. Sri Ramachandran, ably assisted by the Sri K. Ram Kumar, presented the case of the petitioner for special leave, as persuasively as the facts permit but while we were impressed with the industry and advocacy of counsel, we heartily dismiss this petition. Why heartily ? Because the High Court if at all, has erred in favour of the petitioner not against him.

2. The Facts : A stage carriage belonging to the petitioner was on a trip when, after nightfall the bus hit an overhanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God. The Accidents Claims Tribunal, which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly : several lost their limbs likewise. The High Court, after examining the materials concluded :

We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of RW 1 (driver) and consequently the appellants are vicariously to pay compensation to the claimant.

The plea that the criminal case has ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to reopen the holdings on culpability and compensation.

3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents 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. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of

public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

4. We have been taken through a few intricate legal submissions by counsel but we decline to interfere under Article 136 of the Constitution especially where human misery is pitted against operational negligence.

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