

DELHI HIGH COURT

Dewan Hari Chand

Vs.

Delhi Municipality

F. A.O. No. 49-D of 1965

(M. R. A. Ansari, J.)

1.3.1972

JUDGEMENT

M. R. A. Ansari, J.

1. Manmohan Kumar, aged about 28 years, is said to have been knocked down by a D.T.U. Bus No. DLP 720 on 27-1-1962 on the Pusa Road near Telephone Exchange New Delhi. He sustained severe injuries and died on the spot. An application under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) was filed in the Court of the Motor Accidents Claims Tribunal (hereinafter referred to as the Tribunal) by his father and his three brothers claiming compensation of Rs. 1,50,000/- for the death of the deceased in the motor accident. According to the averments in this application, the deceased was travelling on the pillion seat of his scooter No. DLN 3772, driven by one Mohan Lal. The scooter was stopped opposite to *Subzimandi* on the Pusa Road and both the deceased as well as the scooter driver got down from the scooter and while the deceased was standing on the right side of the scooter, a D. T. U. bus bearing No. DLP 720 came at a fast speed and knocked down the deceased causing serious injuries to him as a result of which the deceased died on the spot. The accident occurred due to the rashness and negligence of the driver of the bus. It was further averred in this application that the deceased was of 28 years of age at the time of the accident. He was a Matriculate from the Punjab University and had also passed the National Certificate Examination in Commercial Art and had obtained certificate of merit for his proficiency in photography. The deceased was earning Rs. 1,000/- P. M. from his profession as a photographer and he was expected to earn much more in the years to come if he had lived. The applicants, therefore, estimated the loss sustained by them by the untimely death of the deceased at Rs. 1,50,000/- and claimed

this amount from the Municipal Corporation of Delhi as well as from Shri Rai Singh who was said to have been driving the bus at the time of the accident.

2. The application was resisted by respondents. It was denied that the accident occurred due to the rashness or negligence of the driver of the bus. It was alleged that the bus was being driven carefully at that time and that when the driver of the bus found that the scooter was on the extreme left side of the road and the scooter driver was trying to start the scooter, he thought it safe to overtake the stationary scooter; but when the bus was in the process of overtaking the scooter the driver of the scooter suddenly started the scooter and lost control over the scooter and the deceased, who was sitting on the pillion, fell down on the right side and struck against the left rear portion of the bus as a result of which he received certain injuries. It was, therefore, alleged that the accident occurred due to the contributory negligence of the driver of the scooter as well as of the deceased. The respondents also denied that the deceased was earning Rs. 1,000/- P. M. The respondents, therefore, denied their liability to pay any amount to the petitioners by way of compensation.

3. The learned Tribunal framed the following issues:-

1. Whether the vehicles of respondent No. 1 are exempt from the provisions of Chapter VIII of the Motor Vehicles Act?
2. Whether this application is not maintainable for want of notice under Section 478 of the Municipal Corporation Act?
3. Whether this application is barred by limitation?
4. Whether Manmohan Kumar died in an accident caused by the rash and negligent driving of bus No. DLP 720 at 1.45 P. M. on Pusa Road near Telephone Exchange, New Delhi?
5. To what amount of compensation the petitioners are entitled to and from whom?
6. Whether the petitioners are legal heirs of the deceased ?
7. Whether the deceased was guilty of contributory negligence? If so, to what effect?

8. Relief?

4. Issues Nos. 1, 2 and 3 were not pressed by the respondents at the time of the trial of the suit and were therefore decided against the respondents and in favour of the petitioners. On issue Nos. 4 and 7, the learned Tribunal held that the accident occurred only due to the rashness and negligence of the driver of the bus and that the deceased was not guilty of any contributory negligence. On issue No. 6, the learned Tribunal

held that only the father, first petitioner, was entitled to compensation and that the other petitioners who are the brothers of the deceased, were not legal heirs of the deceased and were not entitled to any compensation. On issue No. 5, he held that the father of the deceased was entitled to compensation of Rs. 2,750/- and passed an award for that amount in favor of petitioner No. 1 and held both the respondents jointly and severally liable to pay the said amount to the first petitioner. Against the said order of the learned Tribunal, the petitioners have filed the present petition for enhancement of compensation.

5. The first question for determination is whether the accident occurred due to the rashness or negligence of the driver of the bus. Three witnesses were examined on behalf of the petitioners to prove that the accident occurred due to the rashness or negligence of the driver of the bus. A. W. 5, Mohan Lal, was the driver of the scooter on the pillion seat of which the deceased was travelling at the time of the accident. He stated that while he and the deceased were going on the scooter in *Subzimandi* on the Pusa Road, the scooter suddenly stopped working, probably due to lack of petrol. He, therefore, took the scooter to the left side of the road near the patri. The deceased was also standing by his side. Just as he was trying to start the scooter, the bus came from behind at an excessive speed and struck the deceased and ran over him and stopped only after travelling a distance of 50 yards from the scene of the accident. To the same effect is the evidence of A. Ws. 6 and 8. A. W. 10, Shri Jaswant Singh S. I., who received telephone message about this accident, reached the place of the occurrence after 10 or 15 minutes and found all these three witnesses present at the scene of the accident. He recorded their statements on the spot.

6. As against this evidence, the respondents also examined three witnesses of whom R. Ws. 2 and 3 are alleged to be passengers travelling in the bus which was involved in the accident. Both these witnesses stated that the scooter was standing on the left side of the road and the driver of the scooter was starting it and that the deceased was standing nearby, and that just when the bus was trying to overtake the scooter, the driver of the scooter had started it and could not keep the balance with the result that the deceased who was sitting on the pillion seat, fell down and struck against the body of the bus. Both these witnesses, however, have admitted in cross-examination that they did not actually see how the accident occurred. Their evidence is, therefore, not of much use. R. W. 1 did not profess to be an eye-witness to the accident. He being the Traffic Inspector of the D. T. U., came to the spot only after the receipt of the information of the accident His evidence, therefore, also is not of much use. The

driver of the bus himself was not examined.

7. Even apart from the evidence of A. Ws. 5, 6 and 8, the admissions made by the respondents in their written statements and the evidence of R. Ws. 2 and 3 also prove that the accident occurred only due to the rashness or negligence of the driver of the bus. The accident occurred in broad day light and on a straight road. Admittedly, the scooter was visible to the bus driver and admittedly it was also standing on the left side of the road. Even if it is assumed that the accident occurred while the scooter was started and while it had come on the road, it does not absolve the driver of the bus from his duty to avoid the accident when he saw the driver of the scooter trying to start it. He must have anticipated that the scooter would be started and that it would move on to the road. He should have, therefore, slowed down the speed of the bus sufficiently so as to bring it to a stop in any emergency. His failure to take such precautions amounts to culpable negligence. I, therefore, agree with the finding of the learned Tribunal that the accident occurred due to the rashness and negligence of the driver of the bus. As in this case the deceased was not the driver of the scooter but was only a passenger, there is no question of any contributory negligence by the deceased.

8. The next question for consideration is what is the amount of compensation which can properly be awarded in this case. This question again depends upon the further question whether the three brothers of the deceased in addition to his father are also entitled to compensation. The learned Tribunal held that the three brothers of the deceased were not entitled to receive any compensation as they were not legal heirs of the deceased. This finding is being challenged in the present appeal. The learned counsel for the petitioner contends that the deceased was a member of an undivided Hindu family of which all the petitioners herein including petitioners Nos. 2 to 4 who are the brothers of the deceased were also members. It is further contended that all the petitioners were dependent upon the earnings of the deceased for their livelihood. It is, therefore, claimed that all the petitioners are entitled to receive compensation for the death of the deceased.

9. The relevant portion of Section 110-A of the Act under which the claim for compensation has been filed is in the following terms:-

"110-A. Application for compensation. - (1) an application of compensation arising out of an accident of the nature specified in sub-section (1) of Section 110 may be made -

(a) by the person who has sustained the injury; or

(b) Where death has resulted from the accident, by the legal representatives of the deceased; or

(c) by any agent duly authorized by the person injured or the legal representatives of the deceased, as the case may be."

This section only provides for the filing of an application for compensation and it mentions the persons who are competent to file such an application. This section does not say that the persons who are competent to file such an application are entitled in their own right to receive the compensation. In other words, the persons who are competent to file an application under Section 110-A of the Act are not themselves the legal heirs of the deceased. For instance, under clause (c) of sub-section (1) an application may be filed even by an agent who is duly authorized to do so by the legal representatives of the deceased. This would not mean that such an agent is the legal heir of the deceased and as such, is entitled to receive compensation. Section 110-A of the Act or for the matter of that, any other provision of the Act does not specify the persons who would be entitled to receive compensation. But it has been generally recognized that only such persons who would be entitled to receive compensation under the Act as are entitled to receive compensation under the Fatal Accidents Act, 1855. Such persons are specified in Section 1-A of the Fatal Accidents Act and they are the wife, husband, parent and child of the deceased. There is a direct decision of a Division Bench of the Mysore High Court on this point. In *M. Basavalingiah v. T. P. Papanna*,¹ while discussing the scope of Section 110-A of the Act, it was observed as follows:-

"The above observations of Woodroffe, J., which have been approved by the Supreme Court, would indicate that the term 'legal representative' as defined in Section 2 (11), Civil Procedure Code, is not restricted in its meaning to heirs, executors and administrators of the deceased as the Bench which decided *M. Ayyappan v. Moktar Singh*,² seems to have thought. However, this does not affect the main conclusion of their Lordships that the term 'legal representative' in Section 110-A of the Act includes the persons referred to as 'representatives' in Section 1-A of the Fatal Accidents Act, namely, the wife or husband, parent and child of the deceased."

The same view was expressed by a Division Bench of the Madhya Pradesh High Court in *Suman v. The General Manager, Madhya Pradesh State Road Transport*,³ That the list of the legal heirs mentioned in Section 1-A of the Fatal Accidents Act is exhaustive and that no other relations or dependants of the deceased like his brothers or sisters can claim compensation has been held by the Lahore High Court in *Bishen*

Das v. Ram Labhaya,⁴ and also by a Division Bench of the Kerala High Court in *P. B. Kader v. Thatchamma*,⁵

10. The learned counsel for the petitioners seeks to rely upon the decision of a Single Judge of the Orissa High Court in *Orissa Co-operative Insurance Society Ltd. v. Bhagaban Sahu*,⁶ in support of his contention that even the brothers of the deceased were entitled to receive compensation. In that case, the application under Section 110-A of the Act was filed by the son of the deceased in his capacity as the karta of the joint family without joining the other heirs of the deceased in the application. An objection was taken that the petition was not maintainable as all the legal representatives of the deceased had not joined in the petition. This objection was negated by the High Court and it has held that the claim under Section 110-A of the Act has a representative character and was essentially one on behalf of the legal representatives of the deceased and that, therefore, the petitioner as the karta of the joint family was entitled to claim the entire compensation. It has, however, to be noted that the joint family of which the petitioner was the Karta consisted only of the deceased, his widow, two sons including the petitioner and the daughter. As already stated, an application under Section 110-A of the Act can be filed even by a duly authorized agent of the legal representatives of the deceased. The decision relied upon by the learned counsel does not support his contention that all the members of the joint family other than the persons mentioned in Section 1-A of the Fatal Accidents Act are entitled to receive compensation. Therefore, the claim put forward on behalf of petitioners Nos. 2 to 4 was rightly rejected by the learned Tribunal.

11. So far as the claim of the first petitioner, namely, the father of the deceased, is concerned, it has to be computed on the basis of the financial loss sustained by him as a result of the death of the deceased and also his own life expectancy. The life expectancy of the deceased will not be a relevant factor. According to the petitioner the deceased was earning about Rs. 1,000/- per month. This claim, however, was not substantiated and it is admitted that according to the income-tax assessment for the year 1961-62, the total annual income of the deceased was a little over Rs. 7,000/-. In other words, his monthly income would come about to Rs. 600/-. It is admitted that the business from which this income was being derived was a joint family business of the deceased, his brothers and his father. In the absence of any evidence regarding the proportion in which this income was to be shared between the several members of the family, it is to be presumed that each member of the family was entitled to an equal share in the business income. Therefore the share of the deceased would only come

about to Rs. 120/- per month. In other words, his annual income would come about to Rupees 1,500/-. Some portion of this income would have been spent by the deceased for his personal expenses and it would be reasonable to estimate such amount at Rs. 750/-. Even if it is assumed that the entire balance of the earnings of the deceased would go to the benefit of the first petitioner, the financial loss sustained by him by the death of the deceased would be Rs. 750/- per year. The first petitioner was aged about 66 years at the time of the accident and the learned Tribunal estimated his life expectancy at 71 years. But the first petitioner is still alive and he had appeared before me and from his appearance, it would be reasonable to extend his life expectancy by another five years. Therefore, the compensation which he would be entitled to receive would be Rs. 11,250/-. The compensation awarded by the learned Tribunal is, therefore, enhanced from Rs. 2,750/- to Rs. 11,250/-.

12. In the result, the appeal is allowed in part. But there shall be no order as to costs.

Appeal partly allowed.

Cases Referred.

1. 1971 Acc CJ 404 ,
2. AIR 1970 Mysore 67
3. 1970 Acc CJ 280 (M.P.).
4. AIR 1916 Lahore 133 (2)
5. AIR 1970 Kerala 241.
6. 1971 Acc CJ 49 (Orissa),