ORISSA HIGH COURT

O.S.C.T. Corpn

Vs

Dhumali Bewa

Misc. Appeal Nos.88, 90, 93 and 94 of 1979

(N.K. Das, J.)

07.12.1981

JUDGEMENT

N.K. Das, J.

1. In an accident by truck ORU 7741 belonging to the appellant Corporation, three persons namely, Bansidhar Mohanty, Kulamoni Das and Sunakar Mallick died and Nachha Swain was injured. This happened at the time of unloading in the jetty No.1 of the Paradip Port on 26-4-1975 at about 3 A.M. M.A. No.93/79 relates to the claim made by the widow and other claimants of Bansidhar. M.A. No.90/79 relates to the claim made by the widow and other claimants of Kulamoni. M.A.88/79 relates to the claim made by the widow and other claimants of Sunakar Mallick. The injured Nachha Swain is the claimant in M.A.94 of 1979.

2. Their case is that the vehicle was being driven by one S. Appa Rao, an employee of the appellant. After this truck was unloaded, the coolies, namely, three deceased persons and the injured along with others, were engaged in filling up the unloaded cromite ore into the baskets behind the truck for the purpose of loading the said ore into waiting barges. The driver of the truck reversed the vehicle without blowing any horn and ran over them which resulted in the death of the aforesaid three persons and injured Nachha Swain. The claimants of late Bansidhar have claimed Rupees 40,000/-, of Kulamoni have claimed Rs. 40.000/, and of Sunakar Rs. 40,000/- as compensation. The injured Nachha Swain has claimed Rs. 30,000/- as compensation including medical expenses. Bansidhar was aged 30 years and was earning Rs. 300/- per month, Kulamoni was aged 30 years and was earning Rupees 300/- per month. Sunakar was aged 35 years and was earning Rs. 300/- per month and Nachha Swain was aged 35 years and he was earning Rs. 300/- per month. The appellant in the common written-statement in all these four cases which have been heard analogously denied that S. Appa Rao was driving the vehicle. It is admitted that S. Appa Rao is only a helper of the truck. He was not authorised to drive this vehicle. One Khirod Kumar Sahu was the driver of the vehicle. At the relevant time Khirod Kumar Sahu was taking tea in a nearby hotel who left the ignition key on the switch board of the vehicle and at that time S. Appa Rao was sleeping inside the vehicle. Under these circumstances the accident took place. Appellant is not aware as to how the accident took place. Therefore, the appellant is not liable.

The insurer who is Opp. Party No.2 in the common written statement denied the averments made in the petitions. It contended that it is not liable to compensate the appellant as the vehicle was driven by S. Appa Rao who had no driving licence. Further the accident took place near Jetty No.1 which is not a public place. For the aforesaid reasons, it is contended that Opp. Party No.2 is not liable to indemnify Opp. Party No.1.

3. The tribunal has held that S. Appa Rao was driving the vehicle at the time of the accident. He was not authorised to drive this vehicle. He was not holding a licence as driver at the time of the alleged accident. The accident took place in a private area. The real driver Khirod Kumar Sahu was negligent in his duties. Therefore, the insurer is not liable and the owner is liable.

4. In case of Bansidhar, the Tribunal has awarded Rs. 25,000/-. In case of Kulamoni it has awarded Rs. 25,000/- and in case of Sunakar, it has awarded Rs. 15,000/-. In case of Nachha Swain, it has allowed Rs. 5,000/-. Interest has been allowed at the rate of 6% Per annum from the date of application till the date of payment. A consolidated cost of Rs. 250.00/- has been allowed.

5. It appears that the plea taken in the written-statement by the present appellant and the statement of the driver. O.P.W.2 are not in consonance with each other. From the evidence of P.Ws. 4, 5 and 6, it is clear that the accident was due to rash and negligent driving of the vehicle. There is no dispute about the fact that the accident took place by the reverse movement of the vehicle when the deceased persons and the injured were busy behind the truck in filling up their baskets with unloaded cromite ore for the purpose of loading them into barges. While they were so busy, the vehicle suddenly reversed without blowing horn or giving any indication that the vehicle would be backed. Thus, the vehicle suddenly backed and ran over the three deceased persons while severely injuring Nachha Swain. The appellant has not adduced any evidence to justify reversing of the vehicle. Therefore, the sudden reversal and backward movement of the vehicle without blowing any horn had caused the death of three persons and injured Nachha Swain.

6. It is the definite case of the claimants that S. Appa Rao was driving the vehicle. The case of the appellant in the written statement is that S. Appa Rao was not the driver and he was the clearner and the driver was taking tea in a nearby hotel and had left the ignition key on the switch board. The driver O.P.W.3 says that while unloading was going on he informed S. Appa Rao to keep watch over the vehicle as well as belongings as he was feeling like going out to respond the call of nature. He admits that he was informed by another driver and the Field Assistant that S. Appa Rao had caused the accident. He accordingly informed the office. Evidently, therefore, the stand taken by the appellant that S. Appa Rao was not driving the vehicle is not true. It is proved from the evidence of the appellant that S. Appa Rao was only a helper and had no authority to drive the vehicle. It is not disputed that the Jetty No.1 was a private place and was not a public place. It is admitted by the appellant that S. Appa Rao had no licence to drive the vehicle. In view of the aforesaid circumstances, the learned tribunal has rightly exonerated the insurer from the liability and has saddled the liability on the appellant. The evidence of O.P.W.3 is contrary to the pleadings. After going through the pleadings and the evidence in the case, I am satisfied that the driver had left the ignition key on the switch board and it was S. Appa Rao without having licence had put the vehicle in the back gear and while the vehicle was driven back the unfortunate accident took place. It would thus appear that there was complete negligence in the part of the driver and it was in course of employment of the owner, namely, the appellant (See

Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt[1], and *Puspa Bai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. Pvt. Ltd*[2].). It has also been held in *Mst. Amruta Dei v. State of Orissa*[3], that normally 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 res ipsa loquitor. The general purport of the words res ipsa loquitor, 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 negligence. When 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 vehicle 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. In the instant case the fact that the accident took place by reversing the vehicle is not disputed. The plea taken by the appellant in the written statement is different from what is stated by the driver of the vehicle. It appears that the appellant is not coming up with a true version. In these circumstances, I am in agreement with the findings of the Tribunal that the claimants are entitled to compensation and that from the appellant.

7. The age of Bansidhar as stated by P.W.1 has not been challenged. He would have lived up to the age of 60 years and could have worked as a coolie for another 25 years. Bansidhar was not only working as a road repairer but also as agriculturist. The monthly income has been rightly assessed by the Tribunal at Rs. 200/- on the average of Rs. 6/- to Rs. 7/- per day. Had he not died he would have contributed towards the maintenance of the claimants at the rate of Rs. 100/- per month for 25 years. The age of Kulamoni Das as stated by P.W.2 has not been challenged. He was working as a coolie along with aforesaid Bansidhar. His monthly income has, therefore, been assessed at Rs. 200/- and his contribution would be valued at Rupees 100/- towards the maintenance of the claimants for about 25 years. On the same par as in the case of Bansidhar, the case of Kulamoni is to be considered and after considering the evidence, I am in agreement with the Tribunal that the assessment has been rightly made at Rs. 25,000/-. The age of Sunakar Mallick as stated by P.W.3 stands un-challenged. He was working as a coolie along with Bansidhar. His age was 35 years and he would have at least lived for fifteen years more and contributed Rs. 100/- per month. The gross compensation amount comes to Rs. 18,000/-. After deducting one-
sixth for lump sum payment and uncertainties, the compensation has been rightly assessed at Rs. 15,000/-. Nachha Swam was hospitalised for fifteen days. His case is that on account of injury to his thigh he is feeling pain if he works for a long time. Further he says that he is not able to carry any load or do chromite loading work. He has not adduced any satisfactory evidence about medical expenses. Nowhere he has stated that he is not able to earn anything after the accident. Moreover, the nature of the injury is such that one cannot believe that he was completely disabled. He was not a regular employee of any contractor or institution for loading only chromite ore. Under these circumstances, an amount of Rupees 5000/- for the fracture of the thigh bone and further pain and suffering appears to be reasonable. A cross appeal has been filed M.A. 88/79 but as I have discussed above, there being no satisfactory evidence adduced from the side of appellants, there is no merit to allow the cross appeal. The award of interest as made by

the Tribunal appears to be reasonable and there is no ground to interfere.

8. In the result, all the aforesaid appeals as well as the cross-appeal are dismissed. In the circumstances of the case, there will be no order as to costs.

Order accordingly.

Cases Referred.

[1] AIR 1966 SC 1697
[2] AIR 1977 SC 1735
[3] (1981) 52 Cut LT 19