Smt. Kaushnuma Begum And Ors vs The New India Assurance Co. Ltd. And Ors on 3 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 485, 2001 AIR SCW 85, 2001 ALL. L. J. 166, 2001 (1) UJ (SC) 464, 2001 (1) ALL CJ 345, 2001 (2) SRJ 38, 2001 (2) SCC 9, (2001) 42 ALL LR 635, (2001) WLC(SC)CVL 116, (2001) 3 BLJ 50, (2001) 1 SUPREME 5, (2001) 1 UC 302, (2001) 1 SCJ 1, (2001) 2 ALLMR 246 (SC), (2001) 1 CIVLJ 452, (2001) 1 RECCIVR 559, (2001) 1 TAC 649, (2001) 1 JT 375 (SC), (2001) 1 ICC 793, 2001 SCC (CRI) 268, (2001) 2 MAHLR 182, (2001) 1 PAT LJR 184, (2001) 1 ALL WC 617, 2001 UJ(SC) 1 464, (2002) 2 JCR 32 (SC), (2001) 2 PUN LR 334, (2001) 3 MAD LW 274, 2001 ALL CJ 1 345, (2001) 2 RAJ LW 308, (2001) 1 GUJ LR 593, (2001) 2 MAD LJ 112, (2001) 1 CURCC 66, (2001) 1 ACC 151, (2001) 1 KER LT 408, (2001) 1 ACJ 428, (2001) 1 SCALE 1, (2001) ILR (KANT) (1) 493, (2001) 2 ANDH LT 226, (2001) 1 ANDHLD 95

Bench: K.T.Thomas, R.P.Sethi

CASE NO.:
Appeal (civil) 6 of 2001
Special Leave Petition (civil) 1431 of 2000

PETITIONER:
SMT. KAUSHNUMA BEGUM AND ORS.

Vs.

RESPONDENT:
THE NEW INDIA ASSURANCE CO. LTD. AND ORS.

DATE OF JUDGMENT: 03/01/2001

BENCH:
K.T.Thomas, R.P.Sethi

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J J U D G M E N T THOMAS, J. Leave granted. Can a claim be maintained before the Motor Accident Claims Tribunal (Tribunal for short) on the basis of strict liability propounded in Rylands vs. Fletcher (1861-1873 All England Reports 1)? The Tribunal dismissed a claim made before it solely on the ground that there was neither rashness nor

negligence in driving the vehicle and hence the driver has no liability, and the corollary of which is that the owner has no vicarious liability to pay compensation to the dependants of the victim of a motor accident. A Division Bench of the High Court of Allahabad dismissed the appeal filed by the claimants by a cryptic order stating that there is no error in the Tribunals order. Hence this appeal by special leave.

The accident which gave rise to the claim occurred at about 7.00 P.M. on 20.3.1986. The vehicle involved in the accident was a jeep. It capsized while it was in motion. The cause of the capsize was attributed to bursting of the front tyre of the jeep. In the process of capsizing the vehicle hit against one Haji Mohammad Hanif who was walking on the road at that ill-fated moment and consequently that pedestrian was crushed and subsequently succumbed to the injuries sustained in that accident.

Appellants are the widow and children of Haji Mohammad Hanif, the victim of the accident. They filed a claim petition before the Tribunal in 1986 itself claiming a sum of Rs.2,36,000/- as total compensation. They said that deceased Haji Mohammad Hanif was aged 35 when he died and that he was earning a monthly income of Rs.1500/- during those days by doing some business in manufacturing steel trunks.

The owner of the jeep disclaimed the liability by denying even the fact of the accident in which his jeep was involved. Alternatively, he contended that any liability found against him in respect of the said jeep the same should be realised from the insurance company as the vehicle was covered by valid insurance policy. The Tribunal repelled the above contentions of the jeep owner. However, the Tribunal found as follows: It appears that the front wheel of the jeep suddenly got burst resulting in the disbalance and occurrence of this accident as it is mentioned in Ex-2 the report of the Police Station. Whatever is the circumstance, the rash and negligence of the alleged jeep is not established. Consequently, the Tribunal dismissed the claim for compensation. However, the Tribunal directed the insurance company to pay Rs.50,000/- to the claimants by way of no fault liability envisaged in Section 140 of the Motor Vehicles Act, 1988 (for short the MV Act) (corresponding to Section 92-A of the Motor Vehicles Act, 1939 the old MV Act).

Aggrieved by the said rejection of the claim the appellants moved the High Court of Allahabad in appeal, as per the provisions of the MV Act. On 28.4.1999, a Division Bench of the High Court dismissed the appeal for which a very short order has been passed. It reads thus: Heard learned counsel for the appellant. Finding has been recorded that the tempo overturned and there were no negligence or rashness of the driver. Hence Rs.50,000/- has been awarded as compensation which is the minimum amount. There is no error in the order. Dismissed.

We have to proceed on two premises based on the finding of the Tribunal. The first is that there was no negligence or rashness on the part of the driver of the jeep. Second is that the deceased was knocked down by the jeep when its front tyre burst and consequently the vehicle became disbalanced and turned turtle. Should there necessarily be negligence of the person who drove the vehicle if a claim for compensation (due to the accident involving that vehicle) is to be sustained?

For considering the above question we may refer to the relevant provisions of the MV Act. Chapter XII of the MV Act subsumed the provisions relating to Claims Tribunal. Whatever could be considered and determined by the civil courts in suits claiming compensation in respect of accidents, arising out of the use of motor vehicles, have been now directed to be determined by Claims Tribunals established by the State under the provisions of the MV Act. Of course, when accident in this case happened it was the old MV Act which was in force. But the old Act contained identical provisions in respect of a lot of matters connected with Claims Tribunal. For the purpose of the appeal only those provisions which are identically worded need be considered. So it would be convenient to refer to the provisions of the new Act.

Section 165(1) of the MV Act confers power on the Sate Government to constitute one or more Motor Accidents Claims Tribunals by notification in the Official Gazette for such area as may be specified in the notification. Such Tribunals are constituted 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, or damages to any property of a third party so arising, or both. Section 175 of the MV Act contains a prohibition that no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal.

It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands vs. Fletcher (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:

> The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.
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> The House of Lords considered it and upheld the ratio with the following dictum: We think that the true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the

> escape was the consequence of vis major or the act of God; but, as nothing of this sort exists, here, it is unnecessary to inquire what excuse would be sufficient. The above Rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. Winfield on Tort has brought out even a chapter on the Rule in Rylands vs. Fletcher. At page 543 of the 15th Edn. of the calibrated work the learned author has pointed out that over the years Rylands v. Fletcher has been applied to a remarkable variety of things: fire, gas, explosiions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation. He has elaborated seven defences recognised in common law against action brought on the strength of the rule in Rylands vs. Fletcher. They are: (1) Consent of the plaintiff i.e. volenti non fit injuria. (2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape. (3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply. (4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise. (5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. (6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply. (7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage which is the natural consequence of its escape.

The Rule in Rylands vs. Fletcher has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, CJ, speaking for the Constitution Bench in M.C. Mehta & anr. vs. Union of India and ors. {1987 (1) SCC 395}, expressed the view that there is no necessity to bank on the Rule in Rylands vs. Fletcher. What the learned Judge observed is this: We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.

It is pertinent to point out that the Constitution Bench did not disapprove the Rule. On the contrary, learned judges further said that we are certainly prepared to receive light from whatever source it comes. It means that the Constitution Bench did not foreclose the application of the Rule as a legal proposition.

In Charan Lal Sahu vs. Union of India {1990 (1) SCC 613} another Constitution Bench of this Court while dealing with Bhopal gas leak disaster cases, made a reference to the earlier decisions in M.C. Mehta (supra) but did not take the same view. The rule of strict liability was found favour with. Yet another Constitution Bench in Union Carbide Corporation and ors. vs. Union of India and ors. {1991 (4) SCC 584} referred to M.C. Mehtas decision but did not detract from the Rule in Rylands vs.

Fletcher.

In Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and anr. {1987 (3) SCC 234} the question considered was regarding the application of the Rule in cases arising out of motor accidents. The observation made by E.S. Venkataramiah, J. (as he then was) can profitably be extracted here: Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and run cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault.

Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands vs. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

No Fault Liability envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under no fault liability can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

Now, we have to decide as to the quantum of compensation payable to the appellants. We first thought that the matter can be remitted to the Tribunal for fixation of the quantum of compensation but we are mindful of the fact that this is a case in which the accident happened more than 13 years ago. Hence we are inclined to fix the quantum of compensation here itself.

Appellants claimed a sum of Rs.2,36,000/-. But PW-1 widow of the deceased said that her husbands income was Rs.1,500/- per month. PW-4 brother of the deceased also supported the same version. No contra evidence has been adduced in regard to that aspect. It is, therefore, reasonable to believe

that the monthly income of the deceased was Rs.1,500/-. In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the MV Act. Though it was formulated for the purpose of Section 163A of the MV Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned.

The age of the deceased at the time of accident was said to be 35 years plus. But when that is taken along with the annual income of Rs.18,000/- figure indicated in the structured formula is Rs.2,70,000/-. When 1/3 therefore is deducted the balance would be Rs.1,80,000/-. We, therefore, deem it just and proper to fix the said amount as total compensation payable to the appellants as on the date of their claim.

Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs.50,000/- paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.

We direct the first respondent Insurance Company to pay the above amount to the claimants by depositing it in the Tribunal. Once such deposit is made the same shall be disbursed to the claimants in accordance with the principles laid down by this Court in General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & ors. {1994 (2) SCC 176}. The appeal is disposed of accordingly.