

A HAZI ZAINULLAH KHAN (DEAD) BY L.RS.

v.

NAGAR MAHAPALIKA, ALLAHABAD

JULY 13, 1994

B [KULDIP SINGH AND N.P. SINGH, JJ.]

C *Motor Vehicles Act 1939 : Claim for compensation—Award of—Courts below not appreciating the evidence properly—Testimony of independent witness rejected and that of interested defence witnesses relied on—Perversity in appreciation of evidence—Claim allowed.*

*Constitution of India, 1950 : Article 136—Special Leave Jurisdiction—Concurrent findings based on appreciation of evidence—Normally not interfered with—Perversity in appreciation of evidence—Need for interference.*

D A college student while on his bicycle was hit by a truck belonging to the Respondent-Nagar Mahapalika and he died on the spot. The claim application filed before the Motor Accidents claims Tribunal was dismissed. An appeal to the High Court was also not successful. Hence this appeal.

E Allowing the appeal, this Court

HELD : 1. The courts below were not justified in disbelieving the testimony of P.W. 1, a disinterested witness who was having tea in a restaurant at a distance of about 15/20 feet from the place of occurrence.

F There is nothing on the record to show that he was trying to help the claimants in any manner or was not a truthful witness. On the other hand, the Nagar Mahapalika produced before the Tribunal the driver of the vehicle and an Assistant Engineer who were its employees. Both were interested witnesses. The Nagar Mahapalika did not produce even a single independent witness to support its version. [565H, 566-A-B]

G 2. The High Court fell into patent error in holding that there was no negligence on the part of the driver of the vehicle. The testimony of P.W. 1 is reliable. Even reading the evidence of the two defence witnesses in between the lines it is clear that the driver of the truck was primarily to be blamed. He drove in a rash and negligent manner resulting in the death

of the deceased. [567-B]

3. The deceased was about 20 years of age. His grand father was alive on the date of the accident and, as such, there was longevity in the family. He was a B.Sc. 1st year student with bright future. The claimant asked for a meagre sum of money amounting to Rs. 1,46,900 as compensation. It is very much on the lower side but keeping in view the time lapse and also the fact that the courts below have not gone into the quantum of compensation, the claim is allowed rounding it off to Rs. 1,50,000 with interest. [567-D-E]

4. Ordinarily, under special leave jurisdiction, this Court is loath to interfere with the findings of the courts below based on appreciation of evidence. But in the facts of the present case since the Tribunal examined the evidence in a perverse manner and drew the conclusions which, on the face of it are erroneous, and the High Court became totally oblivious to the patent perversity in the appreciation of evidence by the Tribunal, it has become necessary to re-examine the evidence. [564-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4682 of 1994.

From the Judgment and order dated 28.3.85 of the Allahabad High Court in F.A. No. 43 of 1975.

Anis Shuhrawardy and C.P. Pandey for the Appellants.

Pramod Swarup for the Respondent.

The Judgment of the Court was delivered by

**KULDIP SINGH, J.** Delay condoned.

Special leave granted.

Abdul Rehman-deceased, a student of B.Sc. 1st year Biology, was coming back from the college on a bicycle on September 9, 1971 at about 5/6 P.M. in the evening. He was hit by truck No. UPZ-4272 owned by Nagar Mahapalika, Allahabad. Abdul Rehman died, as a result of the accident, on the spot. Claim application for compensation was filed on March, 1, 1972 before the Motor Accident Claims Tribunal (the Tribunal) at Allahabad. The tribunal dismissed the application. Appeal filed against the order of the Tribunal was also dismissed by a Division Bench of the

A Allahabad High Court on March 28, 1985. This appeal, by the mother, sister and brothers of the deceased, is against the judgment of the High Court.

In is not disputed that the truck involved in the accident belonged to the Nagar Mahapalika, Allahabad. The claimants examined Abdul Khali-  
 B que as the only witness relating to the accident before the Tribunal. On behalf of the Nagar Mahapalika Brij Lal, the driver of the vehicle and Suresh Chand Srivastava, Assistant Engineer, who was an employee of the Nagar Mahapalika, were examined. On appreciation of the evidence, the Tribunal came to the conclusion that the truck was not being driven rashly and negligently and, as such, dismissed the claim application. The High  
 C Court upheld the findings of the Tribunal.

Ordinarily, this Court is loath to interfere with the findings of the two courts below based on appreciation of evidence, but in the facts of this case we are of the view that the Tribunal examined the evidence in a perverse manner and drew the conclusions which, on the face of it are erroneous.  
 D The High Court became totally oblivious to the patent perversity in the appreciation of evidence by the Tribunal. We have, therefore ventured to re-examine the evidence ourselves.

The Tribunal noticed the statement of Abdul Khalique on behalf of the claimants in the following words :

E "Abdul Khaliq says that his house was situate on Narullah Road, at a distance of 60 or 70 ft. from the place of accident. His further statement was to the effect that he was taking tea in front of a hotel, at a distance of 15 to 20 ft. when the accident took place.  
 F He described the accident in this way: He says that the truck was proceeding from North to South whereas the boy who was the victim was coming from the South to North on a cycle. It was said that the truck was being plied on the main road. He says that the speed of the truck was very fast. About the speed of the cycle, he stated, that it was not fast. He further says that in front of the  
 G truck, a rickshaw was going. When the truck driver swerved the vehicle to save the rickshaw, he did not blow even horn. In the meantime, the boy on a cycle came, and dashed with the truck. He further says that the portion of the vehicle was in impact with the cycle. The boy fell down on the ground. Further examined, he says,  
 H that the truck driver did not switch off the engine and did not stop;

the vehicle, on being chased, and surrounded, the truck driver stopped the vehicle at a distance of 80 to 90 ft. from the place of accident." A

The High Court referred to the evidence of Abdul Khaliq in the following words :

"According to this witness when the accident occurred he was taking tea in a hotel on the said road which was about 15 to 20 feet. from the actual place of occurrence. According to this witness the aforesaid truck was going from the station to the Kareela Bagh and the deceased was coming on cycle from the opposite direction. The truck, according to him, was going with high speed and when the driver wanted to proceed after avoiding a rickshaw on the road the boy on the cycle collided with the said vehicle in the front on the right side of the vehicle. The boy died instantaneously on the spot." B C

Brij Lal (DW-1) was the truck driver. He deposed that the truck was being driven at the speed of 7 to 8 miles per hour. He came to know of the accident only when he heard the voices from behind asking him to stop the truck. It was at that time that he came to know that the deceased struck against the body of the truck on the right side. Suresh Chand Srivastava (DW-2) an employee on the Nagar Mahapalika stated that the truck was moving at a speed of 8 to 9 miles per hour. He denied that the truck was being driven rashly or negligently. According to him the deceased was on cycle coming with speed from the South and when the truck came in the middle of the road from left, the deceased collided with the vehicle from behind on the right side. The High Court summed up the evidence in the following words : D E F

"On the contrary, there is evidence on the record that the deceased was moving on a cycle with the high speed and it is likely that he might have, in order to overtake the rickshaw, unsighted the position of the truck, which was at the time moving on the right of the road in view of the rickshaws standing on the road, and thus he met with the accident on the right side of the truck." G

The Tribunal and the High Court rejected the version of Abdul Khaliq primarily on the ground that there was no corroboration to his testimony. We are of the view that the courts below were not justified in H

A disbelieving the testimony of Abdul Khalique. He was a disinterested witness who was having tea in a restaurant at a distance of about 15/20 ft. from the place of occurrence. There is nothing on the record to show that he was trying to help the claimants in any manner or was not a truthful witness. On the other hand, the Nagar Mahapalika produced before the Tribunal the driver of the vehicle and an Assistant Engineer who were its employees. Both were interested witnesses. The Nagar Mahapalika did not produce even a single independent witness to support its version. The Tribunal and the High Court fell into patent error in preferring the evidence of two wholly interested witnesses to that of Abdul Khalique who was an independent witness and whose presence on the spot could not be doubted.

Even otherwise, the scenario of the accident as can be visualised from the testimony of the witnesses makes it clear that the accident was due to the fault of the truck driver. The truck was proceeding from North to South and the deceased was coming on a cycle from South to North. There was a rickshaw standing or moving in front of the truck. It is in the evidence of the witnesses that the truck which was coming from the opposite side swerved to the right to take over the rickshaw. If that is so then the truck would be almost on its right side and in front of the deceased who was driving the cycle on the left side of the road. The truck driver in the process saved the rickshaw but killed the deceased. The truck driver made an obvious mistake in swerving to the right on a narrow and crowded road. He should have stopped the truck and permitted the rickshaw to be cleared from the way. The action of the driver, who was coming from the North in swerving the truck to its right - while driven in the middle of the road - in order to take-over the rickshaw must have brought the truck head on to the in-coming traffic from the South. The deceased cyclist, who was on the left side of the road, could not have apprehended that the truck would suddenly come right in front of him.

A map ex.p.17 was placed on the record by the claimants. This Map was prepared by the father of the deceased under instructions of Abdul Khalique, PW.1. According to the Map, the accident took place on the right side of the road (North to South) and the deceased collided with the truck on the front and not on the back as alleged by the DWs. The Tribunal and the High Court declined to rely on the Map on the ground that the father of the deceased who prepared the Map was not produced in the

witness box. Abdul Khalique under whose instructions the Map was prepared appeared as a witness and has stated that the same was prepared by the deceased's father at his instance and under his instructions. A

We are, therefore, of the view that the High Court fell into patent error in holding that there was no negligence on the part of the driver of the vehicle. We rely on the testimony of Abdul Khalique. Even reading the evidence of the two defence witnesses in between the lines it is clear that the way accident took place, the driver of the truck was primarily to be blamed. He drove in a rash and negligent manner resulting in the death of the deceased. B

Abdul Rehman deceased was about 20 years of age. His grand father was alive on the date of the accident and, as such, there was longevity in the family. He was a B.Sc. 1st year student with bright future. The claimants asked for a meagre sum of money amounted to Rs. 1,46,900 as compensation. It is very much on the lower side but keeping in view the time lapse and also the fact that the courts below have not gone into the quantum of compensation, we are not inclined to increase the same. C D

We allow the appeal, set aside the impugned order of the Tribunal and the judgment of the High Court. We allow the compensation application of the claimants and award Rs. 1,50,000 (Rounding off the figure Rs. 1,46,900) as compensation to the claimants. The claimants shall be entitled to the interest at the rate of 8 per cent from March 1, 1972 to March 31, 1985. Thereafter from April 1, 1985 till the date of the payment the claimants shall be entitled to 12 per cent interest. The total amount of compensation shall be paid in the name of Smt. Serunnisan, the mother of the deceased. It would be open to her to distribute the amount in any manner she likes amongst the claimants, if she so desires. E F

The Nagar Mahapalika, Allahabad and its successor the Jal Sansthan Allahabad shall be jointly and severally responsible for the payment of the compensation amount.

In case the compensation amount is not paid by the Nagar Mahapalika and Jal Sansthan till October 31, 1994, the amount shall thereafter carry interest at the rate of 15 per cent. The appeal is allowed in the above terms with costs. We quantify the costs as Rs. 10,000. G

G.N.

Appeal allowed.