THE NEW DATAR TRANSPORT CO. (PVT.) LTD. A

v.

SMT. RADHABAI AND ORS.

AUGUST 7, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.] B

Motor Vehicles Act, 1939 :

Motor accident claim—Negligence—Compensation—Accident due to collision of a passenger bus with a jeep—Person sitting on left side of jeep died—Trial judge held that death occurred due to inevitable accident but awarded Rs. 20,000 as compensation—High Court in appeal after appreciating the evidence found that accident took place due to negligence of bus driver, upheld the amount and decreed the claim petition—Held, High Court recorded the finding based on appreciation of evidence—Judgment of High Court confirmed. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2233 (N) of 1970.

From the Judgment and Decree dated 18/19/20.7.67 of the Bombay High Court in F.A. No. 63 of 1960. E

Mrs. A.K. Verma for JBD & Co. for the Appellant.

P.P. Malhotra and Naresh K. Sharma for the Respondent No. 9.

U.U. Lalit for the Respondent. F

The following Order of the Court was delivered :

This appeal by special leave on the ground of pecuniary valuation arises from the judgment and order of the High Court Bombay made on July 18, 19 & 20, 1967 in F.A. No. 63 & 79/64. The indisputed facts are that the S.D.O., R.J. Kulkarni was going in jeep No. MPK-741 along with Tehsildar G.S. Kulkarni, Shri Vaidya, Agricultural Assistant and Peon Parashram which was driven by Shantaram Patki a driver (P.W. 5) on February 14, 1959. When the jeep was proceeding at a speed of 25 to 30 miles per hour at a place called Karanja, a passenger bus coming from the G H

A opposite direction collided with the jeep on the extreme left hand side due to the impact of which R.J. Kulkarni died. The respondents laid a claim for damages for accident. The trial Court found as a fact that the death had occurred due to the inevitable accident but recorded the finding that had the defendants been liable to pay any damages or compensation to
B which the respondents would be entitled, it would have come to Rs. 20,000 and odd. The trial Judge dismissed the petition on the ground that the accident was due to inevitable accident. On appeal, on reappreciation of the evidence, the High Court reversed the finding on negligence and held that the driver of the passenger bus was negligent; consequently upholding the amount awarded by the trial Court, the High Court decreed the
C petition. Thus, this appeal by special leave.

The only question is : whether P.W. 5 was negligent in driving the jeep due to which the collision had occurred ? The High Court had carefully scanned the evidence of P.W. 5 and held thus :

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"We do not think, however, why the statement of Patki that Jeep car had not come to a standstill but was proceeding in slow motion at the time of the accident could not be accepted. Patki was asked in cross-examination as to why he did not take his jeep car either to the right or further to the left when there was possibility of
E impact with the bus. Patki has replied that he did not take the car to the right side of the road because thereby he would be going on the wrong side of the road and he could not take the car further to the left as there was ditch on the left side of the road and the front wheels of the jeep car were likely to get into it. Possible,
F these questions were asked by the defendants indicate that Patki might have avoided the impact by taking the car further to the left or to the right. We are unable to appreciate that Patki could be considered to be wanting in taking further to the left or to the right. We are unable to appreciate that Patki could be considered
G to be wanting in taking necessary care because he could neither take the car to the right nor further to the left. The reason given by Shri Patki for continuing to drive the car on the kachcha road are adequate to show that he could not have deviated from the direction and the side without further risk. We are unable to appreciate how Patki could have taken his car towards the right.
H It was the duty of the driver of the passenger bus to take the bus

on the proper side of the road, i.e., towards his left. If the driver of the bus did not or could not do so, the fault cannot be laid at the door of the driver of the jeep car, circumstances as he was at the relevant time, when he was already on the extreme left on the road i.e. the correct side when proceeding from Martizapur to Karanja. The testimony of this witness, which we have carefully scanned, does no deserve the harsh criticism of the learned judge that Patki has no regard for truth. It is true that Patki has made a statement earlier that his car had come to stop. From that single statement it is difficult to hold that whole of the testimony of this witness is liable to be rejected, as evidence of witness which is not trustworthy. The learned Judge also seems to have failed to take into consideration that part of the evidence of Patki where he speaks about the wheels of the bus as far as he could notice."

A B C

This finding was recorded on pure appreciation of evidence and, therefore, we do not think that we can reappreciate the evidence and come to a different conclusion as to the nature of the accident and negligence of the respective drivers.

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We, accordingly, confirm the finding and order of the High Court and dismiss the appeal with no costs. The respondents are entitled to the interest as awarded by the High Court.

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R.P. Appeal dismissed.