

N. K. V. BROS (P) LTD. A

v.

M. KARUMAI AMMAL AND ORS. ETC. B

March 21, 1980

[V. R. KRISHNA IYER AND D. A. DESAI, JJ.] C

Motor Vehicles Act—Driver of bus acquitted for rash and negligent driving—Civil suit if must also be dismissed.

Indian Penal Code—Section 304A—Requirement of culpable rashness more drastic than negligence sufficient under the law of tort to create liability. D

The petitioner's bus driven by a driver hit an over-hanging high tension wire resulting in the death of some passengers and loss of limb to several others. The driver was acquitted on the ground that the tragedy was an act of God. The Accidents Tribunal held that despite the screams of the passengers about the dangerous over-hanging wire ahead the rash driver sped towards the spot which resulted in the accident. The High Court affirmed the finding of the Tribunal that the accident had taken place due to rashness and negligence of the driver and consequently the petitioner was vicariously liable to pay compensation to the claimant. E

Dismissing the petition,

HELD : 1. The plea that the criminal case had ended in acquittal and that therefore the civil suit must follow suit was rightly rejected by the Tribunal and the High Court. [102 E] F

2. The requirement of culpable rashness under section 304A I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. [102 E]

[The Accident Tribunal must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties and technicalities.] [102 G] G

CIVIL APPELLATE JURISDICTION : Special Leave Petition Nos. 937-939 of 1980.

From the Judgment and Order dated 1-8-1979 of the Madras High Court in A.A.O. Nos. 815-817 of 1977. H

T. A. Ramachandran and K. Ramkumar for the Petitioner.

The Order of the Court was delivered by

KRISHNA IYER, J.—Sri Ramachandran, ably assisted by Sri K. Ram Kumar, presented the case of the petitioner for special leave, as persuasively as the facts permit but while we were impressed with the I

A industry and advocacy of counsel, we heartily dismiss this petition. Why heartily? Because the High Court, if at all, has erred in favour of the petitioner, not against him.

B *The Facts* : A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an over-hanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God! The Accidents Claims Tribunal, which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous over-hanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly; several lost their limbs likewise. The High Court, after examining the materials, concluded :

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D "We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of R.W. 1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant."

E The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under section 304A I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation.

F Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic

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impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

We have been taken through a few intricate legal submissions by counsel but we decline to interfere under Article 136 of the Constitution especially where human misery is pitted against operational negligence.

P.B.R.

Petition dismissed.