
(1993) 05 AHC CK 0029
In the Allahabad High Court

Balbir Singh

APPELLANT

Vs

Pushpa Singh and Others

RESPONDENT

Date of Decision : 21-05-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 50

Citation : (1993) 2 ACC 525

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Judgement

R.R.K. Trivedi, J.—Facts giving rise to this petition are that petitioner is owner of bus No USY 2375 which met an accident on 12.9.1984, at about 6.30 p.m., in which Kailash Nath Singh, husband of respondent No. 1 and father of respondents 2 to 4, died. Kailash Nath Singh was employed as a primary school teacher at the relevant date and time and was coming back from the school alongwith a fellow teacher Raj Bahadur Singh.

2. Motor Accident Claim Petition No. 38 of 1984 was filed by respondent Nos. 1 to 4 claiming damages on 19.10.1984. It may be mentioned here that petitioner did not appear before the Claims Tribunal in spite of notice by Court, though all the modes including publication on 24.3.1985 were resorted to. The claim petition was ultimately allowed and an award was passed on 6.9.1986 which followed an application under Order 9, Rule 13, C.P.C. by petitioner. The application of petitioner was allowed by the learned Tribunal vide its order dated 1.8.1987 on the condition that petitioner deposits a sum of Rs. 50,000/-. Petitioner challenged the aforesaid order in this Court by filing First Appeal From Order No. 664 of 1987 and this Court by order dated 4.9.1987 stayed the condition contained in the order dated 1.8.1987 requiring petitioner to deposit Rs. 50,000/-. However, further proceedings before the Tribunal after restoration were not stayed.

3. After the order dated 4.9.1987 of this Court, the Tribunal proceeded with the case and fixed 8.10.1987, 2.11.1987, 7.11.1987 and 30.11.1987 for filing

written statement by petitioner. On 30.11.1987, petitioner moved an application praying for time to file written statement. On this application Court fixed 7.1.1988 and permitted petitioner to file his written statement. However, petitioner did not appear and Court proceeded ex parte and ultimately allowed the claim petition for Rs. 1,50,000/- and passed the award dated 23.5.1988. Then, petitioner filed another application Under Order 9, Rule 13 C.P.C. for setting aside the award dated 23.5.1988. This application was registered as Misc. Application No. 20 of 1988. It was fixed for 4.4.1989, on which date, it appears that an application was filed by learned Counsel for petitioner before the Claims Tribunal for adjourning arguments on the restoration application. However, as there was no body to press this application it was rejected and the application for setting aside award was dismissed in default on the same day. The order dated 4.9.1989 filed as Annexure 2 to the writ petition is being reproduced below:

4.4.1989: Case called out several times till 3.30. O.P. appeared with his Counsel but applicant did not turn up.

IID. Counsel for the applicant left adjournment sick application with reader but he did not turn up to press it

IID is therefore rejected.

Application is dismissed in default of Applicant.

Then another application was filed by petitioner for restoration of the application Under Order 9, Rule 13 C.P.C. on 11.4.1989 which was registered as Misc. No. 17 of 1989. The application was supported by an affidavit dated 6.4.1989 of Gyan Singh, father of petitioner. This application was contested by the respondents by filing objection and affidavit. The Claims Tribunal after hearing both the sides rejected the application of petitioner by order dated 26.8.1989, aggrieved from which this petition has been filed Under Article 226 of the Constitution.

4. I have heard learned Counsel for parties. Learned Counsel for petitioner has submitted that the absence of petitioner on the date fixed was a bona fide and the Counsel for petitioner moved application before the Claims Tribunal praying for adjournment and thereafter could not appear to press the application under the impression that it shall be allowed as per normal practice of the Court. It has been further submitted that the vehicle was insured. However, the Insurance Company was not impleaded and on that date the petitioner was required to show the papers that the vehicle was insured on the date of accident and as the petitioner could not appear with the papers, application was moved on the ground of non-availability of those papers. The application was illegally rejected. Learned Counsel for petitioner has further submitted that the vehicle was transferred by petitioner in favour of Ramanand Yadav, respondent No. 7, in the month of June, 1983, for an amount of Rs. 50,000/-. Ramanand Yadav filed an affidavit before the Regional Transport Officer, Sultanpur, which has been filed as Annexure 1 to the rejoinder affidavit. The affidavit is dated 25.7.1990. This paper shall be discussed subsequently at the relevant place.

5. Learned Counsel for the petitioner has placed reliance in a case - Balwant Singh v. Jhannu Bat and Ors., decided by a Division Bench of Madhya Pradesh High Court at Indore reported in 1980 ACJ 126. It has been submitted that as the vehicle was transferred in the month of June, 1983 and the accident took place on 12.9.1984, petitioner could not be made liable to pay the damages to respondent Nos. 1 to 4. Seeking support of the aforesaid Division Bench case, learned Counsel for petitioner seriously contended that as the transfer of the vehicle was governed under the provisions of Sales of Goods Act, the transfer was complete on payment of consideration and the transfer of possession of vehicle, irrespective of the fact that in the registration certificate name of petitioner continued. On the basis of this fact it has been submitted that if the award of the Tribunal is not set aside, the petitioner shall suffer irreparable loss and injury.

6. Learned Counsel for respondent Nos. 1 to 4, on the other hand, has submitted that the Court below has examined the explanation offered on behalf of the petitioner at length and after considering the facts and circumstances of the case has recorded a finding that there was no sufficient cause justifying absence of petitioner on 4.4.1989 when his application was dismissed. It has been submitted that this finding is finding of fact and cannot be interfered with by this Court Under Article 226 of the Constitution. It has also been submitted that there is no question of granting restoration in case petitioner has failed to establish sufficient cause. Learned Counsel has placed reliance on cases Hafiz Bashir Ahmad v. Smt. Rani and Ors. reported in 1985 ALJ 716 and Om Prakash and Another Vs. Smt. Rukmini Devi and Others,

7. I have considered the submissions made by learned Counsel for parties and perused the materials on record. The question for consideration in this writ petition is as to whether the absence of petitioner and his Counsel on 4.4.1989 before the Claims Tribunal was justified and then was sufficient cause for the same on which basis the absence may be condoned and the order may be recalled. It is noticeable from the order sheet dated 4.4.1989 that an application was filed on behalf of petitioner by his Counsel stating therein that petitioner did not come to Court to attend the case and hence the case could not be prepared for arguments and it was not possible to argue the case on that date. It was also mentioned in the application that the papers relating to insurance are also not available, which petitioner was asked to produce. The application is Annexure 1 to the writ petition. However, in the affidavit filed by father of petitioner, which has been filed as Annexure 3 to the writ petition, altogether different facts have been given. In para 2 of the aforesaid affidavit, it has been stated that he had come to do necessary pairavi on behalf of petitioner and he contacted his Counsel Sri Sheo Nath Singh but he was too busy, hence he asked to move an application for adjournment and after giving an application he went for taking his lunch. In para 3, it has been further submitted that after giving application he became carefree but when he came at 3.15 p.m. along with his Counsel and enquired about his case, then it was found that the application has been

dismissed in default. In the contents of the application filed on 4.4.1989 and the affidavit are read together, it leaves an impression that the absence was with the only purpose to get adjournment somehow. It cannot be ignored that the claim petition was pending since 19.10.1984 and about five years had already elapsed but even written statement was not filed by the petitioner in spite of several opportunities given. If the explanation given by petitioner is considered in the facts and circumstances of the case, it cannot be believed. Respondent No. 5 has considered the application and the affidavit filed by petitioner at length and has rejected the same for very cogent reasons. It is difficult to believe that learned Counsel for petitioner could have been under impression that the application for adjournment shall be automatically allowed even without pressing the same. From the affidavit filed by father of the petitioner, it appears that the application was moved only for the purpose of getting the case adjourned somehow, though petitioner's father was present there to look after the case. No where it has been stated that he was not instructed for doing necessary pairavi. Further, there was no explanation on the part of petitioner, why application was not filed on the same day for restoration of the application or on the next day. The petitioner filed it on 11.4.1989 though the affidavit and application were already prepared on 6.4.1989. In my opinion, the view taken by the Claims Tribunal in the facts and circumstances of the case is perfectly justified. The submission of learned Counsel for the respondents that in the absence of sufficient cause the restoration cannot be allowed is correct. The cases relied on by him are squarely applicable in the present case.

8. The application on 4.4.1989 was moved showing the reason that the papers relating to insurance could not be available, which the petitioner was asked to produce. It is very important to mention that no averment has been made regarding the fact that the vehicle was insured on the date of accident. Neither the name of the Insurance Company has been disclosed nor the period for which the vehicle was insured has been disclosed. The petitioner has already availed a long period of about ten years but he has not been able to throw any light on this aspect of the matter.

9. Much has been argued by learned Counsel for petitioner on the question of transfer of the vehicle though this fact was not raised before the Claims Tribunal but since it has been raised here and has been strongly pressed, I think this aspect should also be seen to avoid any injustice to the petitioner. Petitioner for the first time in para 10 of the writ petition alleged that, the vehicle was transferred to Ramanand Yadav much before the accident. However, no date of such transfer was mentioned. This fact was disputed in para 13 of the counter affidavit and it has been stated that the transferor was under legal obligation to inform the Transport Authorities within 15 days about the fact of transfer but no such information was given at any point of time and a story has been cooked now to escape the liability. The petitioner in paragraph 5 of his rejoinder affidavit has stated that respondent No. 7 Ramanand Yadav purchased the vehicle in the month of June, 1983 but no specific date has been mentioned.

In para 3 of the affidavit dated 25.7.1990 of respondent No. 7, said to have been filed before the Regional Transport Officer, Sultanpur, it has been stated that the vehicle could not be got transferred in the name of the alleged transfer or for certain personal reasons. It would be appropriate to reproduce para 3 of the said affidavit which is Annexure I to the rejoinder affidavit.

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10. Thus, it was admitted in the affidavit that though the vehicle was allegedly transferred in the month of June, 1983, but upto 25.7. 1990, i.e. for more than seven years, the formalities contemplated in Section 50 of the Motor Vehicles Act, 1988 were not complied with. Section 50(1)(a) creates an obligation on the transferor to inform the registering authority about the transfer within 14 days. There is no explanation worth the name that if the transfer was really done, why the registration certificate could not be got transferred in the name of alleged transferor for such a long time. Rule 55 of the Motor Vehicles Rules, 1989 also creates an obligation on the transferor to report the fact of transfer in Form No. 29. In absence of this action on the part of the petitioner, the said transfer alleged at this late stage cannot be accepted. Had the fact been true, there could have been no hitch on the part of the petitioner to disclose this fact before the Claims Tribunal on his first appearance. It appears that the alleged affidavit has been got filed by petitioner only for creating some evidence for the present case. The petitioner has also filed a copy of the compromise allegedly filed in Original Suit No. 542 of 1990 for showing that in the suit the alleged compromise was filed recognizing the transfer of the vehicle in June, 1983. However, no reliance can be placed on such a compromise. Admittedly, the vehicle was registered in the name of petitioner and under the provisions of the Motor Vehicles Act, he shall be, deemed to be the owner of the vehicle. In this case, accident took place on 12.9.1984. A long time has already elapsed. The heirs and legal representatives of the deceased have not received any amount towards compensation. In the facts and circumstances of the case, petitioner is not entitled for any relief from this Court Under Article 226 of the Constitution.

For the reasons recorded above, the writ petition has no force and is accordingly dismissed. There will be no order as to costs.