

(1983) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 46 of 1972

Banarsi Das and Another

APPELLANT

Vs

Mohd. Safi and Others

RESPONDENT

Date of Decision : 04-01-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 96

Citation : (1984) 1 ACC 332 : AIR 1983 Raj 97 : (1983) RLW 604 : (1983) WLN 1

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : Rana Mal Mehta, for the Appellant; B.L. Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.—In this appeal learned counsel for the appellant submits that Banarsi Das, appellant has expired but his legal representatives have not been brought on record and his name may be struck off from the record. However, this appeal can be maintained on behalf of his wife smt. Premvati who is the other appellant and was one of the claimants in the original Court.

2. Subodh Chandra, who was the son of Banarsi Das and Smt Pranvati, met with an accident on June 21, 1969 at about 7.00 P.M. while he was going on his scooter was struck by truck No. RJW 771 belonging to Mohammed Shafi and which was being driven by that time by Goverdhan. As a result of the aforesaid accident, Subodh Chandra died and a claim petition was filed by his parents Banarsi Das and Smt. Premvati, against the driver, owner fend insurer of the motor vehicle No. RJW 771 on the ground that the said truck was being driven at the relevant lime by Goverdhan in a rash and negligent manner. The Motor Accident Claims Tribunal, Jodhpur by its order dated October 30, 1971 dismissed the claim petition on the ground that the claimants failed to establish that the death of Subodh Chandra was caused on account of rash and negligent driving of

the truck by Goverdhan.

3. In this appeal, the appellants submitted that the fact that Goverdhan was driving the truck in question rashly and negligently at the time when the said truck dashed against the scooter driven by Subodh Chandra is fully proved by the evidence on record and the trial court erred in dismissing the claim petition.

4. During the pendency of the appeal, the appellants and respondents Moham Shafi and Goverdhan arrived at a compromise and a compromise was filed on September 12, 1973 by the learned counsel for the appellants. According to the aforesaid compromise petition, Mohd. Shafi and Goverdhan respondents have compensated the appellants to their satisfaction by a separate agreement and receipt and so the appellants did not desire to proceed against respondents Mohd. Shafi and Goverdhan and it was prayed that the appeal may be dismissed, so far as respondents Mohd. Shafi and Goverdhan were concerned. The appellants, however, stated that they desired to proceed against the Insurance Company, respondent No. 2.

5. Learned counsel for the appellants submits that the compromise was entered into by the appellants under an erroneous impression created by some judgments, which laid down that so far as the liability of the Insurance Company was concerned, proof of negligence on the part of the person driving the vehicle by which the accident had been caused was not necessary. The application filed by the parties did not mention the aforesaid reason for entering into the compromise but the reason which was specifically mentioned in the compromise petition was that the respondents Mohammed Shafi and Goverdhan had "compensated" the appellants "to their satisfaction". If the appellants were satisfied with the compensation which they received from the two respondents Mohd. Shafi and Goverdhan and on that basis prayed for the withdrawal or abandonment of the claim against the said respondents, the provisions of Order 23, Rule 1 C.P.C. permitted the appellants to withdraw the appeal against the two respondents Mohammed Shafi and Goverdhan by abandonment of their claims or part thereof, so far as the said two respondents were concerned.

6. Order 23, Rule 1 C.P.C. authorises any plaintiff to withdraw his suit or abandon his claim or a part thereof, at any time after the institution of suit, and no order of the court is required for such withdrawal or abandonment. The order of the court merely recognises or takes notice of the fact of such withdrawal or abandonment. Thus, the very filing of the compromise petition dated September 12, 1973 by the appellants constituted abandonment or withdrawal of their claim, so far as respondents Mohd. Shafi and Goverdhan were concerned. It may also be noted here that the appellants admitted in the aforesaid application that they were "compensated" by the respondents Mohd. Shafi and Goverdhan "to their satisfaction". It is, therefore, apparent that compromise or withdrawal of the claim by the appellants in respect of Mohd. Shafi and Goverdhan was based upon receipt of valuable consideration by the claimants from the respondent Mohd. Shafi, before filing the compromise application dated September 12, 1973. In

this view of the matter, the appellants cannot be allowed to go back upon the aforesaid agreement, more particularly as they have already received the consideration or compensation "to their satisfaction." from Mohd. Shafi and Goverdhan for withdrawing or abandoning their claim against those respondents. It was only after the receipt of consideration or compensation that the appellants have prayed that the appeal be dismissed against respondents Mohd. Shafi and Goverdhan. In view of the application dated September 12, 1973 filed by the appellants under Order 23, Rule 1 C.P.C., the appeal is dismissed against respondents Mohd. Shafi and Goverdhan, on account of the abandonment of the claim against those respondents by the appellant-claimants.

7. The question which now remains to be decided is as to whether the appeal could still be maintained against respondent No. 2, the insurer, when the appellants have wilfully got the appeal dismissed against the insured, who was the owner of the vehicle. On account of the provisions of Section 95 of the Motor Vehicles Act, the owner of the vehicle which caused the accident is made liable to compensate the victim, in an accident arising on account of the rash and negligent driving of the vehicle by his employee. The owner of the vehicle is made liable for the negligence of his servant or employee on the basis of vicarious liability. Thus, before the master could be made liable it is necessary to prove that the driver was acting during the course of his employment and further that he was driving the vehicle rashly and negligently. The insurer would be bound by the liability which may be incurred by the owner of the vehicle in respect of death or bodily injury to any person or damage to the property of a third person, caused by or arising out of the use of the vehicle in a public Place, on the basis of the policy of insurance. The liability of the insurer is thus co-extensive with the liability of the owner of the vehicle or the person insuring. If the owner of the vehicle has not incurred any liability in respect of the death or bodily injury to any person or damage to any property of a third party, then the insurer also does not incur any liability.

8. In *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, it was held by their Lordships of the Supreme Court that proof of negligence was necessary before the owner or Insurance Company could be held to be liable for payment of compensation in a motor accident claim case. The reason for taking this view is obvious because the right to receive compensation can only arise against a person who is bound to compensate the injured or the claimants due to his failure to perform a legal obligation. If the person is not legally liable, he is under no duty to compensate any one else. If a person who obtains the Insurance policy, in respect of the vehicle which is involved in the accident, is absolved of the liability for payment of compensation, then no liability in that respect can be levied against the insurer. The initial liability to pay damages or compensation for the claim in respect of a motor accident rests upon the owner of the vehicle. u/s 96 of the Motor Vehicles Act the insurer is made liable to satisfy the claim of the third party under the policy of insurance, which might accrue against the person insured and in absence of a decree against the owner

of the vehicle, the insurer cannot be held to be liable for the damages accruing to the insured or the dependants of a person who died as a result of the accident.

9. In *Abdul Ghafoor and Others Vs. The New India Assurance Co. and Others*, the owner of the vehicle was not made a party to the appeal filed before the Allahabad High Court by the heirs of the person, who died as a result of an accident. Their Lordships of the Allahabad High Court held that in the absence of the owner of the vehicle, a decree could not be passed against the insurer, for payment of damages to the dependents of a person who may have died in the accident.

10. In the present case, the claimant-appellants have already received compensation from the owner of the vehicle which was involved in the accident "to their satisfaction", as mentioned in the application dated September 12, 1973. Once having been compensated to their satisfaction by the person insured, the claimants cannot maintain a further claim against the insurer. As the appeal has been dismissed against the owner of the vehicle Mohd. Shafi on account of the withdrawal or abandonment of the claim against him by the appellants, can no longer be maintained against the Insurance Company alone. Having obtained compensation to their satisfaction from the owner of the vehicle, the claimants cannot obtain any separate or further amount by way of compensation from the Insurance Company, because the liability of the insurer is co-extensive with that of the person insured. In this view of the matter, after the withdrawal of the appeal against the owner of the vehicle involved in the accident, on account of abandonment of the claim against him by the claimants, the appeal can no longer be maintained against the insurer alone.

11. In the result, the appeal is dismissed as against all the respondents. The parties are left to bear their own costs of this appeal.