

(2009) 04 SC CK 0030

In the Supreme Court Of India

Case No : Civil Appeal No. 2538 of 2009 (Arising out of SLP (C) No. 280 of 2006)

Bimla Devi and Others

APPELLANT

Vs

Himachal Road Transport Corporation and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Evidence Act, 1872 — Section 106

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 1725 : AIR 2009 SC 2819 : (2009) AIRSCW 4298 : (2009) 3 AWC 3042 Supp : (2009) 5 JT 515 : (2009) 5 SCALE 706 : (2009) 13 SCC 530 : (2009) 6 SCR 362 : (2009) 2 ShimLC 79 : (2009) 6 UJ 2709

Hon'ble Judges : S. B. Sinha, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Dinesh Verma and Rajat Sharma, for A.P. Mohanty, for the Appellant; Himinder Lal, Vimlesh Kumar, Rishi Maheshwari, Shally Bhasin Maheshwari, Vikramjeet Banerjee, Anne Mathew and Raj Kumar Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. This appeal is directed against a judgment and order dated 22.8.2005 passed by the High Court of Himachal Pradesh, Shimla in FAO No. 127 of 1999 whereby and whereunder an appeal preferred against a judgment and award dated 28.10.1998 passed by the Motor Accident Claims Tribunal-II [MACT (I), Nahan] in MAC Petition No. 21-NL/2 of 1997, was set aside.

3. One Jawala Ram, husband of the first appellant herein, was a Police Constable. He was posted at Police Station Dharampur. On 11.2.1997 at about 7 or 8 am, he was standing near the shop of one Chand Kishore. A bus bearing registration No. HP-14-3596 owned by the first respondent was parked there. The second respondent Vijay Kumar was the driver and the third respondent Om Dutt was the conductor of the aforementioned bus. Allegedly, the driver of the bus, Vijay Kumar, reversed the bus without blowing any horn as a result whereof Jawala

Ram died on the spot. Allegedly, conductor also did not bother to check whether any person was standing behind the bus.

4. Respondents, however, denied and disputed occurrence of the said accident. According to them, the deceased died the previous evening and finding the dead body of a person wrapped in a blanket lying at some distance from the bus; they informed the police personnel, whereafter the driver was falsely implicated.

5. The factum of accident, thus, being denied and disputed; one of the issues framed by learned Tribunal on the claim application filed by the appellants herein for grant of compensation in terms of Section 166 of the Motor Vehicles Act, 1988 was:

Whether Sh. Jawala Ram died on 11.2.1997 near Dharampur, due to rash and negligent of Bus No. HP-14-3596 by respondent No. 2 and negligent conduct of respondent No. 3 as alleged?

6. The learned Tribunal upon consideration of the evidence adduced on behalf of the appellant and the first respondent, opined:

(1) Death of Jawala Ram on 11.2.1997 at Dharampur was not disputed.

(2) First Information Report was registered at Police Station, Dharampur on the said date also stands admitted.

(3) Even if the allegations made in the First Information Report are not taken into consideration, the death of Jawala Ram in an accident stood proved by the post mortem examination report (Exhibit-PY) in terms whereof he had died due to brain injury.

(4) Death of Jawala Ram in an accident has also been proved by Shri Dharam Pal (PW3) who was an eye-witness to the occurrence.

7. The driver and conductor of the bus admitted their presence at the scene of occurrence. Vijay Kumar (RW1) alleged that he had seen the dead body wrapped in a blanket behind the bus when he was still to start the bus. The Tribunal did not find his statement to be reliable. Bhawani Dutt (RW2) did not support the version of the respondent as he stated that the driver and conductor of the bus had gone to the police station and the people gathered there stated that someone had been lying dead. He, according to the Tribunal, also could not deny positively that the accident had not taken place because of the use of the bus in question.

It is difficult to believe that the Police Officers would fabricate a case against the respondents. The learned Tribunal opined:

Therefore, keeping in view the statement of PW, Dharam Pal, the death of Jawala Ram because of injuries, the presence of the Bus of the respondents and place and time of the occurrence and the other circumstances of the case, I am convinced that the death of Jawala Ram took place after being hit by the Bus

when it was being reversed in backward directions. Once, it is so held, the respondents, driver and conductor shall have to be held negligent in reversing the bus in backward directions without blowing horn or whistle or giving indication to the persons standing there. Had the driver and conductor of the bus taken care to blow horn or to forewarn the persons standing there before reversing the bus, Jawala Ram, who was stated to be standing behind the bus would not have been crushed. Consequently, it is held that Jawala Ram had died because of the injuries sustained by him in the course of Bus accident because of rashness and negligence of the respondents, driver and conductor of the Bus.

8. The said issue, on the basis of the aforementioned findings, was decided in favour of the appellant.

On an appeal preferred therefrom by the respondents before the High Court, however, the said finding of fact was reversed by it, *inter alia*, opining:

In the post mortem report there is no details of any such crush injuries of tyre marks in fact the thorax and abdomen region have been found by and large normal. Even to the muscle bones and joints there are no serious injuries. The main injury is to the head only. It is not the case of the claimants that only the head of the deceased was crushed under the tyres. Therefore, the version of the claimants is difficult to believe.

The High Court furthermore held that the deceased might have died in some accident and the Police officials wrongly lodged the first information report against the driver of the bus.

Appellant is, thus, before us.

9. Mr. Dinesh Verma, learned Counsel appearing on behalf of the appellant, would submit that having regard to the reasons assigned by the learned Tribunal, the High Court must be held to have committed serious error in passing the impugned judgment.

10. Mr. Maheshwari, learned Counsel appearing on behalf of the respondents, however, supported the judgment of the High Court.

11. The post mortem report clearly stated of a head injury.

12. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report *vis-à-vis* the averments made in a claim petition.

13. The deceased was a Constable. Death took place near a police station. The post mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of a constable has taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus stand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

14. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos. 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.

17. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.