

(1997) 03 PAT CK 0039
In the Patna High Court
Case No : Misc. Appeal No. 107 of 1996

Binod Kumar Choudhary

APPELLANT

Vs

Kamal Narain Thakur and Others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1999) ACJ 46 : (1997) 45 BLJR 1407 : (1997) 2 PLJR 30

Hon'ble Judges : B.P. Sharma, J

Bench : Single Bench

Advocate : Karuna Nidhan Keshav, for the Appellant; Jitendra Kumar Singh and Ajay Kumar Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Sharma, J.—The present appeal has been filed against the award of the Claims Tribunal, Madhubani, under the Motor Vehicles Act, 1939, dated 8.5.1995 and the order of review dated 9.1.1996 in Claim Case No. 13 of 1987 and Review Petition No. 33 of 1995 respectively.

2. The learned Tribunal had allowed the claim of the respondent No. 1 on account of the death of his son in a motor accident and had awarded Rs. 1,00,000 as compensation with interest at the rate of 6 per cent per annum on the same from the date of filing of the petition. The appellant herein happens to be the owner of the vehicle involved in the accident.

3. A brief history of the case is like this. It appears that one young boy, Sanjay Kumar Thakur of Narpat Nagar, within the Police Station Sakri in the district of Madhubani met with an accident on 12.7.1987 in the forenoon, while he was standing near a road crossing at Sakri. It appears that a bus was standing on the road at that place and while the deceased Sanjay Kumar Thakur was standing on the left side of the road, a taxi, bearing registration No. BHQ 4681, came from behind and while swaying to overtake the bus standing there, hit the deceased

and dragged him to some distance. So the boy was crushed and sustained serious injuries and immediately he was taken to a local clinic. Subsequently, his father (respondent No. 1) received information and he arrived and took the boy to Darbhanga Medical College Hospital for treatment, but he died there on the same day at about 9.30 p.m. Some persons had witnessed the incident and a case was also registered in the local police station at Sakri. Later the parent of the deceased, i.e., respondent No. 1 filed a claim petition before the District Judge, Madhubani, who happened to be the Claims Tribunal under the Motor Vehicles Act. The court earlier granted no fault claim of Rs. 25,000 to the claimants, which was paid by the insurance company and subsequently the claim petition was heard and the award in question was made. The vehicle in question, bearing No. BHQ 4681, a Matador, was owned by one Binod Kumar Choudhary, resident of Bara Bazar, Darbhanga (i.e., the appellant herein) and it was insured at the relevant time with the National Insurance Co. Ltd. with its head office at Calcutta and branch at Darbhanga. It appears that the notices were issued to the opposite parties by the Tribunal, and while the owner, opposite party No. 1, appeared and sought time to file written statement, he abstained from filing any written statement and contesting the claim. However, the claim case was contested by the insurance company, which also filed a written statement denying some parts of the allegations made in the claim application. However, the learned Tribunal accepted the plea of the claimants that the deceased had died in the accident, which occurred due to driving of the vehicle bearing No. BHQ 4681 in a public place and he died as a result of sustaining injuries in course of the incident. The Tribunal also held that the claimants being the parents of the deceased were entitled to receive the amount of claims. The learned Tribunal also observed that the deceased was a boy aged about 17 years only and he was a student of I.S.C. at the relevant time and the Tribunal had assessed the total loss at Rs. 1,00,000 and, accordingly, awarded the said amount, but in the original order the learned Tribunal did not pass any specific order as to who was liable to pay the amount of compensation. Therefore, the claimant filed a petition of review on 24.5.1995 praying therein to pass specific order that the part of amount of the award was to be paid by the owner of the vehicle and part of the amount by the insurance company. It was also pointed out that there were certain apparent mistakes in the order in question and, therefore, a prayer was made to review the order passed by the court on 8.5.1995.

4. The learned court heard the parties, as a rejoinder was also filed on behalf of the owner of the vehicle, and reviewed the order by passing another order on 9.1.1996, by which he directed the insurance company to pay Rs. 50,000 together with interest at the rate of 6 per cent per annum and the balance amount of compensation of Rs. 50,000 with interest at the rate of 6 per cent was ordered to be paid by the owner of the vehicle. Accordingly, the owner of the vehicle felt aggrieved by the order and filed this appeal.

5. It is contended on behalf of the appellant that apart from the fact that the court passed the order dated 9.1.1996 without jurisdiction, it is also clear that

the entire award was not passed on the basis of the materials available and on sound reasonings. It has further been contended that first of all compensation is awarded in an accident case only after the claimants allege and prove that the accident in question resulting into death was on account of the rash and negligent driving on the part of the driver of the vehicle involved in the accident. It has been contended that neither negligence was alleged in the claim application nor any evidence was led to this effect and the learned Tribunal also did not record any finding whether the accident which caused death of the victim was on account of rash and negligent driving of the vehicle in question. It has also been further contended by the learned Counsel for the appellant that so far as the amount of compensation is concerned, it has been determined in an arbitrary manner, without any basis or material for the same. It has been contended in this connection that it is obvious that the deceased was only a student and he had no income of his own and he was dependent on his father, but there being absolutely no material to form basis for determining the amount of compensation, the learned Tribunal decided to award compensation of Rs. 1,00,000 in arbitrary manner, which is illegal and improper and it should be set aside.

6. The learned Counsel for the appellant also submitted that the reason for his abstinence from contesting the claim was that when the appellant appeared on notice he found that there was no allegation of negligence in the claim application and, therefore, he did not find it necessary to contest the claim. However, the insurance company contested the claim and raised the point that in absence of evidence of negligence on the part of the driver of the vehicle in question, the compensation could not be awarded and the learned trial court had passed the order and fixed the compensation of Rs. 1,00,000 in arbitrary manner. It has further been contended that so far as the order of review dated 9.1.96 is concerned, it is without jurisdiction and illegal, as the Tribunal had no power to review the order passed by it. It has been contended that there is no provision of review under the scheme of the Motor Vehicles Act and, therefore, the court had no power to review its order. Therefore, it has been contended on behalf of the appellant that the entire award and the order of the learned Tribunal are fit to be set aside.

7. So far as the respondent No. 2, i.e., the insurance company, is concerned, it has been submitted on behalf of the insurance company that the review petition was filed by the claimants themselves, because the Tribunal had not specified the amount to be paid by the insurance company as well as by the owner of the vehicle and because according to the provisions of Section 95 (2) (b) (i) of the Motor Vehicles Act, 1939, the liability of the insurer is fixed to the maximum of Rs. 50,000 only, the entire amount of claim of Rs. 1,00,000 could not have been ordered to be paid by the insurance company. Therefore, the insurance company, respondent No. 2, has also filed a cross-objection to this effect that original award of the learned Tribunal was illegal and improper. In this context, it has also been contended that the award was made without recording a finding that there

was negligence on the part of the driver of the vehicle in question and without taking into consideration that the deceased was a student and was not earning anything and was himself dependent on his parents. Therefore, the learned Counsel for the respondent No. 2 has also contended that the award is fit to be set aside, but so far as the order of review is concerned, the learned Counsel for the insurance company has supported it.

8. So far as the question of allegation regarding negligence on the part of the driver of the vehicle is concerned, it may be noted that the claim applications are required to be filed in the pro forma prescribed and there is no column where the negligence could be mentioned. Of course, some facts might have been added at the end of the application, but as the columns were filled up and there was no column for mentioning the facts of negligence, it could not be mentioned. However, it has been the case of the claimant from the very beginning that while the deceased boy was standing by the side of the road, the driver of the vehicle concerned arrived and tried to overtake the bus standing there and the deceased was hit and he was dragged to some distance, as a result of which he sustained serious injuries on his person and ultimately he died as a result of the injuries thus sustained by him. It has also been pointed out on behalf of the respondent No. 1 that it is not a fact that the evidence was not adduced in this regard, rather it is pointed out that some witnesses have clearly stated this fact in their evidence in the court. It was pointed out that PW 1, Md. Shahabuddin, PW 2, Arjun Sah and PW 4, Md. Aslam, happened to be the witnesses on the point of occurrence. They were eyewitnesses of the occurrence and had seen the occurrence while they were present at the place of occurrence at the relevant time and these three witnesses have very clearly stated in their evidence that the taxi was coming at high speed and it was also not blowing horn and it hit the deceased and went on dragging him to some distance. Therefore, it has been contended on behalf of the respondent No. 1 that the evidence is sufficient to show that the vehicle which caused accident was being driven in rash and negligent manner. However, it is true that the learned Tribunal failed to note this fact and record a finding to this effect in the order. But it is contended that the learned Tribunal has taken this fact into account while deciding to allow the claim of respondent No. 1. I find that if the material is available on the record even if a finding by mistake is not recorded, the material can be taken into consideration. It appears that there is sufficient material in the evidence on record to show that the vehicle, which caused the accident was being driven by the driver in rash and negligent manner, which resulted into accident and the death of the victim was caused.

9. So far as the quantum of compensation is concerned, ordinarily the amount of compensation is decided on the basis of income factor, but at the same time it cannot be said that if a person, who was not having some independent income, dies due to accident, his dependants or his close relations and heirs do not deserve any compensation. It is clear from the evidence that the deceased in this case was a young boy only 17 years old and he had passed the Matriculation

examination in first division and he was studying in Intermediate Science Class at the relevant time. Therefore, it cannot be said that he had no prospect of being great help to the family and specially to the parents during their old age. It is also to be taken into account, while deciding the death of young boys, that the parents get good deal of shock and they suffered trauma on account of such accident. Such shock and trauma cannot be assessed in terms of money, but some factors may be taken into account while deciding it. The boy was quite grown up, he was a good student, having some future prospect, and the parents were fixing their hope regarding their support during the old age on the boy. Therefore, the death of such a young boy in such manner is bound to create serious shock and trauma to the parents. It is true that so far as the future prospect is concerned, it is always uncertain but looking into the career of a student, an average assessment can be made that the boy belonged to a middle class family and was having a good education with good career and there cannot be any exaggeration in assessing the loss to the family, considering their loss on account of death of their son and future bread-earner, to the tune of Rs. 1,00,000. Therefore, the amount of compensation of Rs. 1,00,000 does not appear to be either highly exaggerated or unconscionable. Therefore, so far as the award is concerned, there does not appear to be any reason to interfere with the same.

10. Coming to the question of the bar of review, it has been contended by the learned Counsel for the respondent No. 1 that though the Motor Vehicles Act does not lay down any power of review, since a Tribunal is supposed to work as a court and where there is no specific procedure laid down for the purpose of disposal of such application, the provisions of the CPC apply, it cannot be said that the court has no power and jurisdiction to review the order. However, there is some test. In this regard, the learned Counsel for the respondent No. 1 submitted that in the case of *S. Nagaraj and Others Vs. State of Karnataka and Another*, this principle was discussed and some observations were made by their Lordships in the majority view. It has been observed by their Lordships:

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice.

It has also been further observed by their Lordships, while dealing with the question of review:

But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court.

In this context, it has been contended by the learned Counsel for the respondent No. 1 that it clearly indicates that even if no other provision is available, any

correction of the mistake of the court may be made by exercise of inherent jurisdiction u/s 151 of Code of Civil Procedure.

11. I agree with the contention of the learned Counsel for the respondent No. 1. It may be noted in this connection that their Lordships in *S. Nagaraj (supra)* have observed:

...Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality....

12. The learned Counsel for respondent No. 1 also cited another decision of the Allahabad High Court in the case of *Oriental Insurance Co. Ltd. Vs. Fida Ali and Others*, , in which it has been observed by his Lordship that review of an order, if there is some patent mistake, is permissible. It has been held that it would be congruent with the object of creation of the Claims Tribunal to hold that the Tribunal has the power to review its order, because the Tribunal has all the trappings and attributes of a civil court and as such it will have the inherent powers to correct/rectify patent errors of fact or of law committed by itself, and in this context it has been held:

In the conspectus of the above discussion, I find that submissions of the learned Counsel for the petitioner that Motor Accidents Claims Tribunal has no jurisdiction to review its order on any ground whatsoever, are jejune of merits. The Motor Accidents Claims Tribunal, in my opinion, is invested with the power to review or recall on limited ground that the order sought to be reviewed or recalled is patently illegal having been passed in ignorance of any statutory provision or of any law declared by the superior court or of any fact well established on record.

13. It is thus obvious that the Claims Tribunal has power to review its order if there is some apparent mistake in it. It has been contended by the learned Counsel for the respondent No. 1, which is also supported by the learned Counsel for the respondent No. 2, that the learned Tribunal failed to take into notice the provisions of Section 95 (2) (b) (i) of the Motor Vehicles Act, 1939, according to which the liability of the insurance company is to the maximum of Rs. 50,000 only and since this statutory provision of law was ignored by the learned Claims Tribunal the order in question was fit to be reviewed. Therefore, the order of review cannot be said to be illegal and without jurisdiction. I find substance in the contention of the learned Counsel for the respondents.

14. Learned counsel for the appellant has, however, placed reliance on *Smt. Gayatri Devi Vs. Tani Ram and Others*, , in which it has been observed that a plea of negligence cannot be allowed to be raised into an application for compensation in claim case under the Motor Vehicles Act, but as discussed earlier it cannot be treated as an incumbent on the part of the claimants to make a mention of the term of negligence of the driver in view of the fact that there is no column in the pro forma of the application provided under the rules.

15. Considering the entire circumstances, I find that there is no merit in this

appeal. The appeal is, accordingly, dismissed on contest, with costs. Hearing fee Rs. 64 only.

16. At this stage it may be noted that the learned Counsel for the respondent No. 2 submitted that already Rs. 75,000 and odd has been paid to the claimants by the insurance company and, therefore, the insurance company has no further liability for making payment. The learned Counsel for the respondent No. 1 also agreed to it. It is, therefore, clear that the appellant shall pay Rs. 50,000 with interest as ordered by the lower court in this case. Appeal dismissed.