
(2015) 12 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1297/2012

Chotha Ram and Others

APPELLANT

Vs

Lal Kanwar and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2015) 12 RAJ CK 0041

Hon'ble Judges : Vijay Bishnoi, J.

Bench : Single Bench

Advocate : R.J. Punia, for the Appellant; M.S. Soni for Rajesh Parihar, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—This civil misc. appeal is directed against the award dated 19.04.2012 passed by Motor Accident Claims Tribunal, Barmer (hereinafter referred to as "the tribunal") in Civil Misc. Claim Case No. 90/2011, whereby the tribunal has directed the appellants to pay compensation of Rs. 5,18,000/- jointly and severally to the respondent Nos. 1 to 6 with the interest at the rate of 9% per annum from the date of filing of the claim petition i.e. 30.03.2011.

2. The appellants are owner and driver of the vehicle Bolero bearing No. RJ-04 GA 3573 and has filed this appeal while claiming that the tribunal has grossly erred in exonerating the respondent No. 7 - Insurance Company from paying the compensation to the respondent Nos. 1 to 6 and illegally fastened the liability upon the appellants to pay the said compensation.

3. Brief facts of the case are that the respondent Nos. 1 to 6 have filed a claim petition before the tribunal while claiming that on 06.02.2011 at about 04:00 PM, deceased Shaitan Singh, who was working as a cleaner on the vehicle Bolero No. RJ-04 GA 3573 owned by the appellant No. 1 - Chotha Ram, was travelling along with Jai Singh and Chanan Singh, while going towards Balotra then on account of

rash and negligent driving of the driver of the vehicle i.e. appellant No. 2 - Rajendra Kumar it turned turtle and deceased Shaitan Singh received serious injuries and on account of that he died on spot. It is claimed that the vehicle Bolero No. RJ-04 GA 3573 owned by the appellant No. 1 and driven by the appellant No. 2 was insured with the respondent No. 7 - Insurance Company and as the accident occurred on account of rash and negligent driving by the appellant No. 2 adequate compensation be awarded to the claimants for the death of Shaitan Singh.

4. The claim is disputed by the respondent No. 7 - Insurance Company before the tribunal on the ground that the deceased was travelling in the goods vehicle as a passenger and no premium was charged by the Insurance Company for the passenger and, therefore, it is not liable to pay compensation. That the appellants Nos. 1 and 2 have filed reply to the claim petition, wherein they have admitted that the deceased Shaitan Singh was working as Khalasi on the vehicle Bolero No. RJ-04 GA 3573, however, it is denied that the accident occurred on account of rash and negligent driving by the appellant No. 2.

5. The tribunal after pondering over the evidence adduced by the parties has held that the accident, in which Shaitan Singh died, had taken place on account of rash and negligent driving by the driver - appellant No. 2. However, regarding the liability of the paying compensation, the tribunal has exonerated the respondent No. 7 - Insurance Company while holding that the claimants have failed to prove that at the time of accident, deceased Shaitan Singh was employed as cleaner by the owner of the vehicle Bolero No. RJ-04 GA 3573 and on the date of the accident, he was travelling in the vehicle as a cleaner and not as a passenger. The tribunal has fastened the liability of paying compensation upon the appellants.

6. Assailing the impugned award, learned counsel appearing for the appellants has argued that the tribunal has grossly erred in exonerating the respondent No. 7 - Insurance Company while relying on the First Information Report submitted before the police in relation to the accident in which Shaitan Singh died. He has submitted that mere placing reliance upon the First Information Report for the purpose of proving the accident, the contents thereof ipso facto cannot be said to have been proved. He has further argued that the First Information Report was brought on record for the purpose of proving the accident and not for fixing the liability on the part of the owner or driver of the vehicle involved therein. The learned counsel for the appellants has contended that the tribunal has grossly erred in placing reliance solely on the First Information Report for the purpose of exonerating the respondent No. 7 - Insurance Company. He has further argued that from the averments made in the claim petition and the evidence adduced by the claimants in support thereof it, clearly proves that the deceased Shaitan Singh was employed as Khalasi on the vehicle involved in the accident and on the date of accident too, he was travelling in the vehicle in the capacity of cleaner of which premium was paid to the respondent No. 7 - Insurance Company and the

same has been proved from the Ex.NA/1. Learned counsel for the appellants has, therefore, argued that the finding of the tribunal of exonerating the respondent No. 7 - Insurance Company and fastening the liability of paying compensation upon the appellants is illegal and the same is liable to be set aside.

7. In support of the above contentions, learned counsel for the appellants has placed reliance on the decisions of the Hon''ble Supreme Court rendered in Baldev Singh Vs. State of Punjab, and Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another, .

8. Mr. Vinay Kothari, learned counsel appearing for the respondent No. 7 - Insurance Company has submitted that before the tribunal the First Information Report was exhibited on behalf of the claimants - respondent Nos. 1 to 6 and the same was admitted by the respondent No. 7 - Insurance Company as well as the appellants and, therefore, the contents of the First Information Report are not required to be proved by the respondent No. 7 - Insurance Company and the tribunal has not committed any illegality in placing reliance upon the First Information Report. It is further argued by learned counsel for the respondent No. 7 - Insurance Company that in the First Information Report, there is no mention of the fact that Shaitan Singh was travelling in the vehicle involved in the accident as a cleaner and only it is mentioned that he was travelling in the vehicle as a passenger along with two other persons. It is argued that since the respondent No. 7 - Insurance Company has not charged any premium for the passenger in the goods vehicle, the tribunal has rightly exonerated the respondent No. 7 - Insurance Company from paying the compensation to the claimants.

9. In support of the above contentions, learned counsel for the respondent No. 7 - Insurance Company has placed reliance on the decision of the Hon''ble Supreme Court rendered in Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, .

10. Heard learned counsel for the appellants and perused the impugned record.

11. It is true that in the claim petition, the claimants have made an averment that deceased Shaitan Singh was engaged as a cleaner on the vehicle Bolero No. RJ-04 GA 3573 on the date of the accident and was travelling in the said vehicle in the capacity of cleaner. The appellants in their written statements have admitted this fact that the deceased was engaged as cleaner on the vehicle involved in the accident.

12. In support of the claim petition, wife of deceased Shaitan Singh has deposed as AW-1 and one Chanan Singh co-traveller of the deceased Shaitan Singh was examined as AW-2. Though both of them have claimed that deceased Shaitan Singh was employed as a cleaner on the vehicle involved in the accident on the day of accident but have failed to prove any documentary evidence in support of the said contention. On the other hand in the First Information Report Ex.2, which was lodged by the nephew of the deceased Shaitan Singh, it is mentioned

that on the date of accident the deceased was travelling in the vehicle Bolero No. RJ-04 GA 3573 along with Chanan Singh and Jai Singh, however, there is no mention that the deceased was engaged as a cleaner on the said vehicle or was travelling in the said capacity in the vehicle on the day of the accident.

13. Now the question comes whether the tribunal has committed any illegality in placing reliance on the contents of the First Information Report or not.

14. The Hon"ble Supreme Court while deliberating on the similar point in the case of Oriental Insurance Company Limited (supra) has held as under:-

"5. It is to be noted that in the claim petition itself a reference was made to the lodging of the first information report.

6. The learned counsel appearing on behalf of the appellant would submit that as the respondents themselves relied on the first information report, the High Court could not have ignored the same. Reliance in this behalf has been placed on Hukam Singh v Smt. Udham Kaur.

7. The learned counsel appearing on behalf of the respondent, on the other hand, would submit that only because first information report was relied upon for the purpose of proving the accident, the contents thereof ipso facto cannot be said to have been proved. In support of the said contention, reference has been made to Narbada Devi Gupta v Birendra Kumar Jaiswal.

8. It is not known whether the Central Government has yet framed any scheme in respect of the hit-and-run cases. We are not, however, concerned therewith in this case. The respondent had filed an application under Section 166 of the Motor Vehicles Act, 1988. It was required to be determined in accordance with the procedures laid down therefor. It will, however, be pertinent to refer to Deepal Girishbai Soni v. United India Insurance Co. Ltd. on this aspect, wherein it was observed: (SCC p.394, para 22)

"22. The Law Commission furthermore recommended for laying of a scheme in terms where of the victims of "hit-and-run accident" could claim compensation where the identity of the vehicle involved in the accident was unknown. Yet again, the 199th Law Commission in its report submitted in 1987 stated the law as it stood then in the following terms:

"The law as it stands at present, save the provisions in Chapter VII-A inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay the compensation and which fault caused the harm.""

9. Where an accident occurs owing to rash and negligent driving by the driver of the vehicle, resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. Owner of the vehicle in terms of the Act also becomes liable under the 1988 Act. In the event vehicle is

insured, which in the case of a third party, having regard to sub-section (2) of Section 147 of the Act, is mandatory in character, the Insurance Company would statutorily be enjoined to indemnify the owner.

10. The insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act.

11. The learned counsel appearing on behalf of the respondent contended that first information report was brought on record for the purpose of proving the accident and not for fixing the liability on the part of driver of the vehicle involved therein.

12. In *Narbada Devi* whereupon reliance has been placed, this Court held that contents of a document are not automatically proved only because the same is marked as an exhibit. There is no dispute with regard to the said legal proposition.

13. However, the factum of an accident could also be proved from the first information report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.

15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefore consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon....."

15. As per the law laid down by the Hon''ble Supreme Court in the above judgment, it is clear that the contents of the First Information Report can be relied upon by the Court if the First Information Report has been exhibited as document without any objection from either of the parties.

16. In the present case, the First Information Report was exhibited on behalf of the claimants and the appellants did not object the exhibition of the said First

Information Report at any point of time. The respondent No. 7 - Insurance Company also did not object the exhibition of the said document. As per the law laid down by the Hon"ble Supreme Court in Oriental Insurance Company Limited (supra), when the appellants did not object the production of the First Information Report as exhibit during the pendency of the claim petition, it is not open for them to question the contents of the said First Information Report.

17. In view of the above discussions, I find that the tribunal has not committed any illegality in exonerating the respondent No. 7 - Insurance Company while placing reliance on the contents of the First Information Report Ex.2.

18. Hence, I do not find any merit in this appeal and the same is hereby dismissed.

19. Stay application also stands dismissed.