
(1991) 01 MP CK 0028
In the Madhya Pradesh High Court
Case No : M.A. No. 118 of 1985

Gokul Prasad

APPELLANT

Vs

Ram Singh and Others

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Motor Vehicles Act, 1988 — Section 140
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (1991) 2 ACC 606 : (1992) ACJ 459

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : Fakhruddin, for the Appellant; M.V. Tamaskar and T.C. Naik, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (now repealed by the Motor Vehicles Act, 1988) by the claimant/appellant against the order dated 7.12.1984 of the Motor Accidents Claims Tribunal, East Nimar (Khandwa), whereby his claim was totally rejected on the ground that he failed to prove that truck No. CPD 8147, driven, owned and insured by the respondent Nos. 1, 2 and 3 respectively, was involved in the accident.

2. The undisputed facts are that on 2nd November, 1982, at about 5 o'clock in the daytime, while the claimant was going on a bicycle from Harsood to village Sadiyaoani a truck coming from opposite direction suddenly crossed, hitting him with such a force on his left arm that his left hand was instantaneously chopped off at the place of the accident.

3. The claimant's case was that Madhukar Rao, PW 5, who was also passing by, soon after the accident helped the claimant in rushing him first to the police station and immediately thereafter to the hospital.

4. According to the claimant, who was examined before the Claims Tribunal as AW 1, he had noted the number of the truck as CPD 8147 and had reported the same in the police station. A copy of the police report is Exh. D-2 in the case. The claimant examined in support of his version Madhukar Rao, AW 5, who had rushed him from the place of accident to the police station and the hospital. Madhukar Rao, AW 5, also stated that he had noted down the number of the truck as CPD 8147. The claimant also examined Mohan Singh Rawat, Sub-Inspector of Police, as AW 3, who had made investigation in relation to the accident for alleged offences of rash and negligent driving under Sections 279 and 338 of the Indian Penal Code. The above Sub-Inspector in the course of investigation has recorded the statement of the owner of the truck, Omprakash s/o Manohar Lal (respondent No. 2 in this appeal). A certified copy of the statement of Omprakash given to the police in the course of investigation was obtained from the records of the Criminal Case No. 167 of 1982. The criminal case could not proceed as the driver of the said truck Ramsingh, respondent No. 1, is reported to be absconding. In his statement made to the police, (a certified copy of which is on record as Exh. P-3), Omprakash admitted that driver of the truck on his return on 2.11.1982 had admitted that the truck was involved in the accident.

5. The case of the respondents was of complete denial that truck No. CPD 8147 was involved in the said accident. The owner of the truck was examined before the Tribunal as NAW 3 who denied to have given any statement as recorded in Exh. P-3 of his truck being involved in the said incident. He, on the contrary, took a plea that the truck on the fateful day was engaged by some other party on some other route, far away from the place of the accident. The Claims Tribunal by its order under appeal disbelieved the testimony of the claimant, Gokul Prasad, AW 1 and Madhukar Rao, AW 5, that they had noted the truck number. In disbelieving the testimony of the above two witnesses the Tribunal was mainly influenced by the fact that in the information recorded by the police there is no mention of the truck number and therefore, it could not be believed that the witnesses had known the truck number and mentioned it to the police. With respect to the statement recorded, during investigation by the police, of the truck owner Omprakash, evidenced by Exh. P-3, the Claims Tribunal held that the said statement could only be used for the purpose of contradiction and could not be relied upon as an independent piece of evidence. (See para 24 of the order of the Claims Tribunal). In the manner aforesaid the Claims Tribunal dismissed the whole claim holding that it was not proved that the truck in question of the respondents was involved in the accident.

6. Learned counsel appearing for the claimant in this appeal first made an attempt to convince me that the testimony of Gokul Prasad, AW 1 and Madhukar Rao, AW 5, should be believed that they had noted the truck number. This argument has not at all appealed to me. It is most unlikely that after a sudden collision the claimant was so much alert to note the truck number. Similarly, Madhukar Rao, AW 5, who rushed him to the hospital cannot also be believed

that he noted the truck number, because if it was so, it was most unlikely that he would not have mentioned that number to the police and the police would have omitted to record the same in the first information report.

7. The second submission of the learned Counsel for the appellant/claimant, however, has great weight and deserves to be accepted. The counsel for the claimant submitted that Exh. P-3, the statement of the truck owner made to the police, was duly proved before the Tribunal and the said statement which contains the admission of the truck owner Omprakash could not be rejected by the Tribunal as having no evidentiary value. The counsel in that respect submitted that the bar u/s 162 of the Criminal Procedure Code with regard to the statement made to the police can have no application to the cases before the Claims Tribunal. The counsel placed reliance, in support of his above proposition, on Dharman and another Vs. N.C. Srinivasan and others, para 15, Savitribai v. Doddappa 1981 ACJ 422 (Karnataka), paras 15, 16 and Pattammal Vs. M. Munuswami,

8. Learned counsel appearing for the respondents/owner and the insurance company disputed the above legal position that the statement made before the police can be used as evidence before the Claims Tribunal. In the above respect it was also argued that the certified copy of the statement made to the police could not be relied on as it was not a public document of which a certified copy could be obtained and produced in evidence. I had refixed the case for further arguments on the above question on 8.12.1990 and the learned Counsel for the claimant invited my attention to the order-sheet of the Claims Tribunal dated 22.12.1983 which shows that on the application of the claimant under Order 13, Rule 10 of the Code of Civil Procedure, record of Criminal Case No. 539 of 1982, pending in the Court of Judicial Magistrate First Class, Harsood, was summoned for proving the certified copies obtained from that court. The Claims Tribunal had allowed that application. It is, therefore, now clear that the original case diary of the police in which the statement, Exh. P-3, was recorded of the truck owner Omprakash was summoned by the Claims Tribunal which was put to the Sub-Inspector Mohan Singh Rawat, AW 3, who stated the certified copies to be corrected on the basis of original. The same, original and the certified copy was confronted to the truck owner Omprakash, NAW 3. The argument of the respondents, therefore, that mere production of certified copy of the police statement had no evidentiary value loses all force because the proceedings of the Claims Tribunal unmistakably show that the record of the criminal case containing the original statement recorded by the police was before the Claims Tribunal on the date of recording of evidence of the aforesaid two witnesses.

9. The counsel on the other side were at pains to satisfy me on the question whether the statement made by the truck owner Omprakash before the police has any evidentiary value in the claim case before the Tribunal. The case of Karnataka High Court in Savitribai v. Doddappa 1981 ACJ 422 (Karnataka), fully supports the contention of the counsel for the claimant and I find myself in

complete agreement with the law stated therein. In para 16 of the above judgment the statement made to the police has been relied as an admission on the basis of the decisions of the Supreme Court in *Bharat Singh and Another Vs. Bhagirathi*, and *Bishwanath Prasad and Others Vs. Dwarka Prasad and Others*, Relying on the aforesaid two decisions of the Supreme Court for holding that the said statement of the truck owner can be used as his admission, Karnataka High Court discussed the evidence and held in that case as under:

In the instant case we are concerned with the admission of the owner of the vehicle which caused the accident. It is the case of the claimants that he has made an admission against his own interest in the statement before the police and they have proved the statement by examining the Investigating Officer as PW 4 in the case. The admission is marked and admitted into evidence as Exh. P-6. Exh. P-6 is a very clear and unambiguous admission of the owner that it was the truck the number of which is mentioned in the petition that caused the accident, that it was his cleaner who was driving the truck at the relevant time and that the truck dashed against the deceased Narayanasa and killed him on the spot. The relevant portion reads:... Thus, as stated above there is a very clear admission that the truck which caused the accident was the truck bearing No. MYW 4336 which belongs to respondent No. 1 in this appeal. Therefore, the Tribunal should have relied upon this clear admission of the owner duly proved by the evidence of PW 4, the Investigating Officer. The Tribunal, instead of doing so, has observed that it is merely a previous statement of a witness, which is not correct, in our considered view, for reasons discussed above.

10. Relying on the aforesaid decision of the Karnataka High Court I, therefore, hold that the Claims Tribunal was totally wrong in ignoring the admission of the truck owner contained in his statement made to the police and proved in the case by Exh. P-3 in the testimony of Mohan Singh, AW 3, that it was truck bearing No. CPD 8147 owned by the respondent No. 2, Omprakash, which was involved in the accident.

11. Having thus held that it was the truck CPD 8147 which was involved in the accident, the next question is whether the respondents can be held liable to pay the compensation and to what extent. The manner in which the accident has taken place and the fact that the driver of the truck has absconded and the owner has denied the involvement of his vehicle, the principle of *res ipsa loquitur* has to be applied to the case. The thrust of the vehicle was so great that the claimant lost his one hand which was chopped off instantaneously. The negligence of the truck driver is, therefore, apparent from the manner of occurrence of the accident. The respondents, therefore, are held liable for payment of compensation.

12. The last question remains as to what should be the quantum of compensation. Learned counsel for the respondents submitted that there is not enough evidence on record and the case should be remitted to the Tribunal for deciding that question. To me it would be too harsh, now after so many years, to

remand the case to the Tribunal for determining the compensation. The accident took place as back as in the year 1982 and the Tribunal having dismissed his claim the claimant has not been paid anything. I would, therefore, proceed to fix the quantum of compensation in the appeal itself.

13. At the outset I may say that in fixing the quantum of compensation I have to keep in mind that after coming into force of the new Motor Vehicles Act, 1988, the minimum compensation even on the basis of no fault liability u/s 140 of the Motor Vehicles Act, 1988 is Rs. 12,000/- for grievous hurt. Any compensation, therefore, for tortious liability cannot be less than Rs. 12,000/-. Learned counsel for the claimant cited a few cases to show conventional figures in similar cases where a young student lost his one arm.

14. Reliance is placed on State of U.P. v. Vinod Kumar Bhatnagar 1984 ACJ 776 (Allahabad), where to a boy, aged about 20 years and student of B.A. Part III, for amputation of right arm the compensation awarded was Rs. 42,000/-. In Orissa Cooperative Insurance Society Ltd. v. Ranjan Kumar Garabaru 1976 ACJ 21 (Orissa), to a student of seven years old the compensation was awarded at the rate of Rs. 75/- per month for fifty years because of amputation of left arm (comes to Rs. 45,000/-). In the instant case, the claimant at the relevant time was a student of Xth class and was aged about 19 years. He belongs to a Harijan community and judicial notice can be taken of the fact that he would have been given all facilities by the State for his higher education. It cannot be disputed that amputation of his left hand has disabled him for all his life from earning up to his maximum efficiency if he would have been able-bodied. For the remaining part of his life he will have to suffer a serious physical handicap which is bound to reduce his earnings. Taking the totality of the circumstances and also keeping in view the conventional figures for such an injury, in my opinion, an amount of Rs. 40,000/- would be just and fair compensation which the respondents are liable to pay to the appellant/claimant.

15. The appeal, therefore, succeeds and is hereby allowed. The order of the Claims Tribunal dated 7-12-1984 is hereby set aside. It is directed that the respondents are liable to pay the compensation in the sum of Rs. 40,000/- jointly and severally to the appellant/claimant. The above amount shall carry interest at the rate of 6 per cent per annum from the date of judgment till its realisation. The appellant shall also get costs of the proceedings throughout. Counsel's fee Rs. 500/-, if certified.