
(2005) 11 MP CK 0001
In the Madhya Pradesh High Court

Govind Kunwar and Others	Vs	APPELLANT
Badriprasad and Others		RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 158

Citation : (2006) 3 ACC 134

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 30.7.1998 passed by II MACT, Mandsaur in Claim Case No. 243/1997 whereby the claim petition filed by the appellants has been dismissed, the present appeal has been filed.

2. Short facts of the case are that undisputedly in a accident which took place in intervening night of 1.12.1994 and 2.12.1994 at about 11.00 p.m., deceased Devendra Singh died. Complaint was lodged at about 1.00 a.m. and thereafter, claim petition was filed by the appellants before learned Tribunal wherein it was alleged that the accident has taken place by the offending tanker bearing registration No. MP-14-C-3424 which was driven by respondent No. 1, owned by respondent No. 2 and insured with respondent No. 3.

3. Upon complaint made by the appellants criminal case was registered at Crime No. 162/1994 and after the investigation the criminal case was dropped and final report was sent to the concerned Magistrate. The claim petition was opposed by the respondents on various grounds including on the ground that no accident has taken place by the offending tanker. It was also alleged by respondent Nos. 1 and 2 that the offending tanker has been sold to Keshrilal s/o Heeralal. The plea of respondent No. 3 was to the effect that since accident has taken place by an unknown vehicle, therefore, the respondents are not liable for payment of compensation, if any. It was prayed that the claim petition be dismissed. On the basis of the pleadings of the parties, learned Tribunal framed the issues, recorded the evidence and vide award dated 30.7.1998 the claim petition was

dismissed. Being aggrieved by the impugned award, the present appeal has been filed.

4. Learned Counsel for the appellants submit that there is ample evidence available on record to demonstrate that the accident has taken place by the offending tanker. It is submitted that the accident took place in the intervening night of 1.12.1994 and 2.12.1994 near Dhaba of Ganpat. Immediately, thereafter, Ganpat rushed to the police station and lodged FIR at about 1.00 a.m. Thereafter, Ganpat has appeared as witness (A.W. 4) in the present case and stated that accident has taken place by the offending tanker No. M.P.-14-C-3424. It is submitted that Ganpat has also explained in his statement that why the number of tanker was not mentioned in the FIR. It was stated that at the time when Ganpat rushed to the Police Station, Dinanath, Head Constable asked Ganpat to sign on blank paper and upon his instructions Ganpat signed the blank paper. It is submitted that since police authorities were not taking action in the matter, therefore, number of complaints were made by the appellants, out of which first complaint was on 5.12.1994 i.e., after two days of accident wherein it is specifically mentioned that accident has taken place by the offending tanker No. M.P.-14-C-3424 which was sent by post. Thereafter, on 15.12.1994 the complaint was made to the police station. It is submitted that all these documents are Exs. P/6 to P/8. Learned Counsel placed reliance on a decision of Madras High Court in the matter of Pallavan Transport Corporation Vs. Saroj Goyal and Others, , wherein Divisional Bench of Madras High Court has observed that merely because eye-witness to accident did not inform the police but if his evidence is cogent, natural and probable regarding the manner of accident, it can safely be accepted. The mere fact that he has not given any complaint to the police will not diminish to the credibility of the witness to any extent as observed by the Tribunal. Further reliance was placed on a decision in the matter of Shakuntala Gajanan Naik and Others Vs. Tushar V. Rajadhyax and Others, (DB), wherein the Divisional Bench of Bombay High Court has observed that it must be borne in mind that this is not a criminal case and on the contrary, a welfare statute which is designed to compensate either the victims of the accident or the dependents left behind by the victim of accident who dies in that accident. It is further submitted that in the written statement filed by respondent Nos. 1 and 2 jointly the defence was taken to the effect that the offending tanker was sold by them. It is submitted that during course of investigation evidence was produced by the respondent Nos. 1 and 2 to the effect that the offending tanker was under repair. It is submitted that on this plea of the owner and driver of the tanker Police Station, Y.D. Nagar, Mandsaur dropped the proceedings. For this contention a reliance was placed in the matter of Neeam Jha Vs. Manju Devi and Another wherein Patna High Court observed that the offending bus and their cross-examination could not dislodge them. Owner produced route permit of the bus and contended that road in question did not fall within its route but owner had not taken this defense in the written statement and it was an afterthought. Tribunal appreciated the evidence and held that bus was involved in the accident

and its driver was rash and negligent.

5. Mr. Vishal Verma, learned Counsel for the appellant placed reliance on a decision in the case of Virat Sama Vs. Mohan Lal and Others, wherein the claim was refused by the Tribunal on the ground that in the police report, negligence has not been attributed to auto-rickshaw driver, High Court of Punjab and Haryana held that in accident cases, FIR is often lodged in a haste and the same cannot be a substitute for the evidence giving exhaustive version of the occurrence. The statements before the Tribunal are made on solemn affirmation, whereas the FIR is never lodged on solemn affirmation.

6. Learned Counsel for the respondent No. 3 submits that the findings of the learned Tribunal are based on cogent and proper appreciation of evidence. It is Ganpat who lodged the FIR immediately after the accident and has specifically mentioned that unknown vehicle has caused the accident in the statement before the learned Tribunal, it was tried to improve the case by submitting that complaint was lodged by him by signing a blank paper at 1.00 a.m. in the night. It is submitted that in the case-diary which has been called, the statement of Ganpat was recorded and immediately on the next date in that statement it has been stated that unknown vehicle has caused the accident. It is submitted that the police has recorded the statement of number of persons who were working on Dhaba and those witnesses had stated that unknown vehicle had caused the accident. It is submitted that from perusal of the statements it is evident that Ramesh informed about the accident to Ganpat. Learned Counsel placed reliance on a decision of this Court in the matter of Smt. Kokilabai and Another Vs. Abdul Bahav and Others, (DB), wherein Divisional Bench of this Court in a case where number of offending truck was in dispute held that from the evidence of these two witnesses, it is clear that they had not witnessed any accident, which led to the death of Radheshyam and Rajendra Kumar. In fact, if they had really seen the accident, then their conduct, as is clear from their depositions, was highly unnatural. According to them, they were in a hurry to attend the political function and, therefore, they just informed some policeman at the Bus-stand Police Chowki. They attended the political function where number of police officers were present, but they never disclosed the fact that accident to any one. They had not even contacted the family members of the deceased persons after the accident, either on the same day or immediately thereafter. It is also submitted that complaints alleged to have been made by the appellants cannot be relied upon; firstly there is no authentic proof to the effect that in fact those complaints were made because it does not bear the acknowledgements of concerned police authorities to whom the complaints were made; and secondly there is no believable proof of its sending.

7. From perusal of the written statement submitted by the respondent Nos. 1 and 2 it is evident that the defence which was taken was to the effect that the offending tanker has sold to Keshrilal s/o Heeralal, resident of Dhan Mandi, Mandsaur while no evidence has been led in this regard.

8. In compliance of the orders of this Court Mr. S.D. Bohra, Government Advocate for the State Government has produced the case-diary of Crime No. 162/-1994 of Police Station, Y.D. Nagar, Mandasur. From perusal of the case-diary it is evident that the FIR was lodged on 3.12.1994 at about 1.40 a.m. in which the time of accident has been mentioned as 2-3.12.1994 at 11.30 p.m. In the FIR it is mentioned that unknown vehicle has caused the accident resulting which Devendra Singh, Forest Guard has died. On 3.12.1994 the statement of Ganpat Singh s/o Bhagwan Singh, Ramesh s/o Ramlal and Mahendra Singh s/o Ganga Singh were recorded in which no where it is stated that offending tanker No. MP-14-C-3424 has caused the accident and the case was closed on 20.12.1994 i.e., after two weeks of the accident. However, upon further complaints the investigation was reopened and the statement of Salim Khan s/o Amir Mohd. Khan, Jawahar s/o Nanuram, Fakruddin s/o Hazi Ishmil, Badri Prasad s/o Lalu Ji, Kundan Lal s/o Shiv Shanker Lal, Mahesh s/o Kishan Lal Jain and Roop Chand s/o Jatoo Ji were recorded.

9. From perusal of the case-diary it is evident that the investigation was completed on 26.12.1994 i. e., within 3 weeks from the date of accident when it was not disputed that an accident has taken place and one person has died then even if no witnesses were available then what was the justification for closing the evidence in such a short time of 3 weeks that too without making investigation regarding the vehicle which was mentioned in the complaint dated 5.12.1994. The complaint dated 5.12.1994 which is Exhibit/A-6 finds place in the case-diary at page 36. Similarly, other complaints are also in the case-diary at pages 35, 37 and 38. There is nothing in the case-diary to the effect that inspite of receipt of complaint on 5.12.1994 why investigation was not made regarding the offending tanker whose number was mentioned in the complaint. The investigation re-started upon the repeated complaint made by the appellant. At the time of re-investigation the statement of Mahesh Singh s/o Ganga Singh and Roop Chand s/o Jatoo have been recorded on 1.6.1995 in which it is specifically stated by them that they have seen the accident and the number of offending tanker was M.P.-14-C-3424. Both witnesses have also appeared in the witness-box before the learned Tribunal. The investigation authority has also recorded the statement of one Jawaharlal s/o Nanuram who has stated that he was the driver of tanker No. MP-14-C-3424 and Badriprasad was the cleaner of the said tanker. It is also submitted that at the relevant time offending tanker was coming from Baroda with diesel and tanker was parked at depot and at about 4.00 p.m. It is submitted that he brought the offending tanker at the petrol pump and informed the owner of the tanker that the vehicle requires repairing. It is also stated that Badriprasad was left on the vehicle for the purpose of repairing and on 3.12.1994 at about 4.00 to 4.30 p.m. and he went back with the tanker. Statement of Fakruddin who is the owner of the tanker and f Badriprasad who is the cleaner of the tanker have also been recorded and from perusal of all the statements, it is evident that the repairing work has taken place in the night hours and the offending tanker left early in the morning. After recording of all these statements

the investigating officer has mentioned in the report that complainant/claimant under advice of some advocate has collected witnesses for giving false evidence to get the claim from the Insurance Company.

10. Appellants are the wife, mother and children of the deceased Devendra Singh. They are not persons who has lodged the FIR. u/s 158 of the Motor Vehicles Act it is the duty of the officer in-charge of the police station to forward the copy of the information to the Claims Tribunal within 30 days. There is no reason that police authorities put the final report within 3 weeks hastily inspite of receipt of complaint dated 5.12.1994 on the ground that no witnesses are available. Similarly, there was no justification for rejecting the statement of Roop Chand and Mahendra Singh only on the ground that under the advice of some advocate the number of offending tanker has been mentioned to get the claim from Insurance Company. Both the witnesses had also appeared before the learned Tribunal. On the contrary from perusal of evidence of driver, cleaner and owner of the offending tanker, it is evident that on the relevant date, the offending tanker was in operation as the same was repaired in the night hours when the accident took place. The claim cases are required to be decided on probabilities.

11. In view of this, the findings of learned Tribunal that it is not proved that the accident has taken place by the offending tanker is set aside. So far as the amount of compensation is concerned the learned Tribunal has calculated a sum of Rs. 2,20,000. The appellant shall be entitled for a sum of Rs. 2,20,000 as calculated by the learned Tribunal. So far as the interest is concerned, the appellants shall be entitled for the interest @ 6% per annum from the date of application.

12. Appeal stands allowed. No order as to costs.