
(2008) 08 SHI CK 0025
In the High Court Of Himachal Pradesh

Himachal Road Transport Corporation and Another	APPELLANT
Vs	
Jarnail Singh and Others	RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2009) ACJ 2807 : (2008) 3 ShimLC 10

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—A challenge has been laid by this FAO to award dated 25.6.2004 passed by the learned Motor Accident Claims Tribunal (II), Una in MAC Petition (RBT) No. 128/01/99.

2. The brief facts necessary for the adjudication of this FAO are that Sh. Dilbag Singh sustained injuries on his person in a motor accident on 22.1.1998 at 1.45 p.m. near village Polian, Tehsil and District Una while he was travelling as a pillion rider on a scooter being driven by his son Jarnail Singh. Initially, the claim petition was filed by Sh. Dilbag Singh and he died during the pendency of the claim petition. His legal representatives were brought on record being son and widow of Dilbag Singh. Sh. Dilbag Singh remained under treatment with effect from 22.1.1998 to 27.1.1998. His disability was assessed to the extent of 25%. The appellants contested the claim petition. It was denied that the accident has been caused due to rash and negligent driving by Sh. Sita Ram, proforma respondent No. 3. In fact, the appellants had denied the very factum of accident caused by the H.R.T.C. bus. The learned Motor Accident Claims Tribunal on the basis of evidence led by the claimants awarded a sum of Rs. 1,51,816 along with interest @ 9% from the date of petition i.e. 3.8.1999 till realization of the amount vide award dated 25.6.2004. This FAO has been filed against the award dated 25.6.2004.

3. Mr. H.S. Rawat, Advocate had strenuously argued that the findings recorded by the learned Motor Accident Claims Tribunal with regard to negligence of the driver are liable to be set aside. He also contended that the driver i.e. proforma respondent No. 3 has already been acquitted of the charge by the Chief Judicial Magistrate, Una vide judgment dated 13.9.2001 (Ex.RW-1/A). He has also challenged the quantum.

4. Mr. Ajay Sharma, Advocate had supported the award dated 25.6.2004.

5. Mr. N.K. Thakur, Advocate had adopted the arguments of Mr. H.S. Rawat.

6. I have heard the learned Counsel for the parties and perused the record carefully.

7. The accident has taken place on 22.1.1998. Sh. Dilbag Singh remained under treatment in hospital with effect from 22.1.1998 to 27.1.1998. He had suffered 25% disability. The copy of the FIR is Ex.PW-3/A. The disability certificate is Ex. PB dated 15.9.1998. The appellants have taken a contradictory stand before the learned Motor Accident Claims Tribunal the manner in which the accident took place on 22.1.1998. A suggestion was put to the petitioner that the scooter skidded resulting in injury to Dilbag Singh though initially the stand of the appellants was that the accident was not caused by HRTC bus and in fact the driver Sh. Sita Ram on humanitarian ground had removed injured Dilbag Singh. Subsequently a suggestion was also put that the bus was being driven by the uncle of the petitioner and in order to save him, Sita Ram, Driver had been implicated. The appellants have not placed on record the copy of the duty register to substantiate that it was the uncle of the petitioner and not Sita Ram, who was driving the bus on the fateful day i.e. 22.1.1998. The learned Motor Accident Claims Tribunal on the basis of the self-contradictory stand of the appellants had come to a right conclusion that HRTC bus bearing No. HP-20-0679 driven by proforma respondent No. 3 was involved in the accident.

8. Mr. H.S. Rawat had also argued that pursuant to the FIR Ex.PW-3/A, a challan was put up in the Court of learned Chief Judicial Magistrate, Una. The learned Chief Judicial Magistrate, Una has acquitted the driver on 13.9.2001. The judgment of the criminal Court rendered by the learned Chief Judicial Magistrate dated 13.9.2001 has rightly been discarded by the learned Motor Accident Claims Tribunal. It is settled law by now that the judgment whereby the driver is acquitted will not absolve the owner to pay the compensation by the learned Motor Accident Claims Tribunal.

9. A Division Bench of the Punjab and Haryana High Court in Brij Mohan Sahni and Ors. v. Mohinder Kumar 1966 ACJ 83, has held that the findings of the criminal Court are not relevant for the civil Court. Their Lordships have held as under:

One other matter may be noticed before we finally conclude. Mr. Bedi, has placed strong reliance on the order of acquittal recorded in favour of the defendant by a

Criminal Court in a case brought against him under Sections 279/338, Indian Penal Code. As observed by a Full Bench of the Punjab High Court (Beckett, Abdur Rahman and Martin JJ., in *B.N. Kashyap v. The Crown*, "the findings on certain facts by a Civil Court is not relevant before the Criminal Court under the provisions of Sections 40, 41, 42, 43, Indian Evidence Act, when it is called upon to give a finding on the same facts or vice-versa". This principle of law is equally applicable to the statements which were or were not made before a Criminal Court. Mr. Bedi has assailed the evidence of R.S. Batra PW-4 and K.G. Ahuja PW-6 on the ground that they did not appear in the Criminal Court as witnesses although when they recognized the plaintiff in December, 1950, they still had time to appear before the Criminal Court whose judgment was delivered on 22nd of January, 1951. We do not know whether the evidence had been actually recorded before December, 1950, and besides, this is a circumstance which would not weigh with the decision of a Civil Court.

In our opinion, the trial Court's judgment is correct and on a review of the evidence should be upheld. In the result, both the appeal and the cross-objections fail and are dismissed with costs.

10. Their Lordships of the Hon'ble Supreme Court in *N.K.V. Bros. (P.) Limited v. M. Karumi Ammal and Ors.* 1980 ACJ 435, have held that the plea that the criminal case ended in acquittal has no bearing and was rightly rejected by the Courts below. Their Lordships have held as under:

The Facts : A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an overhanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God. The Accidents Claims Tribunal which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly; several lost their limbs likewise. The High Court, after examining the materials, concluded:

We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of R.W. 1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant.

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirements of culpable rashness u/s 304-A, I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation.

11. The learned Single Judge of Delhi High Court in *Delhi Transport Corporation*

v. Harbans Kaur and Ors. 1983 ACJ 110, has held that the fact that the driver was acquitted by the criminal Court is no ground to hold in a civil case that he was not negligent. The learned Single Judge has held as under:

Counsel for the appellant submits that driver was acquitted in the criminal case. This is no ground to hold in civil case that he was not negligent. In N.K.V. Bros. (P) Ltd. v. M. Karumai Animal and Ors. it has been held that the plea that the criminal case ended in acquittal has no bearing to reject the application for compensation under the Act.

12. The learned Single Judge of the Madras High Court in M.D. Thanthai Periyar Transport Corporation Ltd. v. Ammani Ammal and Anr. 1989 ACJ 847, has held that irrespective of the order of acquittal or conviction in a criminal case, the Tribunal is duty bound to look into the entire evidence and come to an independent conclusion regarding the manner in which the vehicle was driven during the time of occurrence. The learned Single Judge has held as under:

So far as the question of liability is concerned, it is seen that the evidence of RW-1 itself shows that his evidence cannot be relied on. His interested testimony cannot be made use of to hold that he was not responsible for the occurrence. The evidence of PW1 and PW3 also can be looked into with respect to the occurrence in the instant case. While taking the entire evidence thus available through PWs 1 to 3 and the evidence of RW1, it is seen that the evidence of PW2 is to be given credence. A careful scrutiny of the evidence clearly discloses that it was only due to the rash and negligent driving of RW1 that the occurrence took place. The judgment in Exh. B-1 need not be relied on for coming to the conclusion in a claim petition filed u/s 110-A of the Motor Vehicles Act. Irrespective of the order of acquittal or conviction in a criminal case, the Tribunal is duty bound to look into the entire evidence and come to an independent conclusion regarding the manner in which the vehicle was driven during the time of occurrence. This Court finds that there is sufficient and adequate evidence available on record to confirm the finding of the Tribunal that it was only due to the rash and negligent driving of the bus in question that the occurrence took place.

13. The learned Single Judge of the High Court of Andhra Pradesh in A.P.S.R.T. Corporation and another Vs. Sravaji Aruna and others, , has held that the judgment in the criminal Court is not conclusive. The learned Single Judge has held as under:

In an accident that occurred on May 16, 1981 at Gudipet between milestones 241/6 and 241/8, the appellant-Corporation's bus APZ 7304 proceeding from Mancherial dashed against two persons by name Venkatarao scooter driver and Tirupathirao pillion rider who died thereat. The claimants are the widow and children of the deceased Tirupathirao and they laid the claim in a sum of Rs. 1,56,900. The Tribunal below awarded a sum of Rs. 1,00,000 as against which the appeal has been filed. The trump card for the appellants is the judgment of

the criminal Court in C.C. No. 391 of 1981 dated July 13, 1982 on the file of the Judicial First Class Magistrate, Luxesettipet in which the driver of the bus was acquitted of the charge u/s 304-A, Indian Penal Code. It was marked as Exh. B-2 in this case. Mr. Harinath, learned standing Counsel for the Corporation, placing reliance thereon has contended that it was prosecution case that the deceased were attempting to overtake the bus which was going ahead of the scooter, they dashed against a stationed Jeep bearing No. APH 1326 and fell down and came under the wheel of the bus, as a result, the accident had occurred and it is not on account of the driver of the bus, but on account of the rash and negligent driving of the deceased. Therefore, the Tribunal is unjustified in awarding damages and the case should have been dismissed on the ground that the driver of the bus has not been established to have been driving the bus rashly and negligently. It is also contended that the judgment of the criminal Court recording the acquittal of the accused (driver) for the offence u/s 304-A, Indian Penal Code has become final. The question, therefore, is whether the Tribunal is justified in not giving primacy to the findings recorded in that regard. It is no doubt true that in the above criminal case, the criminal Court acquitted the driver for the offence u/s 304-A, Indian Penal Code. In that, the case set up by the prosecution was that the deceased were trying to overtake the bus. On the other hand the specific case now set up and the evidence adduced in proof thereof is that both the deceased were going on the scooter and the Corporation bus was coming behind and hit against them and it was on account of the rash and negligent driving of the driver of the bus, and as a result of the hit, both the deceased fell under the wheels of the bus. This evidence was accepted and on the basis of the evidence, the Tribunal below was not inclined to place reliance on the findings recorded by the criminal Court in the above criminal case. It is now well settled that the judgment in the criminal Court is not conclusive. It is open to the claimants to adduce evidence aliunde de hors the finding that the accident had occurred as a result of the rash and negligent driving of the driver of the bus. In this regard the evidence adduced is that of PWs 1 and 2 who are the direct witnesses to the occurrence. It is no doubt true as found in the judgment that the F.I.R. was registered on the basis of the statement made by the first informant who claims to be the direct witness. The evidence of PWs 1 and 2 was considered by the Tribunal below and accepting their evidence, the claimants' claim was accepted. It is no doubt true that PWs 1 and 2 were not examined in the criminal Court. But their non-examination in the criminal Court does not automatically disentitle the evidence of these witnesses who gave evidence here as direct witnesses, to be rejected outright. It is only a circumstance to be taken into account. But that circumstance alone is not sufficient to reject the evidence in toto. The evidence on record is clear that they have no interest in the deceased and they are the direct witnesses and their evidence is cogent and convincing. Once their evidence is accepted as trustworthy and acceptable, then merely because they were not examined in the criminal Court is not a ground to throw their evidence overboard. Obviously the Tribunal below considered from this perspective and was not inclined to give primacy to the judgment acquitting

the accused (driver) u/s 304-A, Indian Penal Code. Considered from this perspective, I hold that the Tribunal below has not committed any error in recording that finding, warranting interference.

14. A Division Bench of the High Court of Banya Sarkar Vs. Sipra Guha Roy and Another, has held that standard of proof in a criminal Court and civil Court is not the same. Their Lordships have held as under:

In our view it was not necessary on the part of the Claims Tribunal to take into consideration the police report and the deposition recorded by the police. The accused may be discharged or acquitted in a criminal case but that does not show that the accident did not take place or that cannot have any repercussion on the finding of the Claims Tribunal on the basis of the evidence and documents on record. The standard of proof in a criminal Court and civil Court is not the same. In the instant case the appellant failed to prove the fact that the said bus did not travel the area where the accident took place as per the stand taken.

15. The learned Single Judge of the High Court of Rajasthan in Nathu Singh Verma and Others Vs. Behari Dass and Others, has held that the acquittal of driver of the offending vehicle by the criminal Court is not binding in claim proceedings. The learned Single Judge has held as under:

The learned Counsel for the appellants has contended that the acquittal of the vehicle driver by the criminal Court is not binding in claims proceedings and the evidence which had been led in these proceedings can be said to be relevant for purpose of arriving at a finding in these proceedings. For this proposition reliance has been placed on Mahavir Pershad v. Municipal Corporation of Delhi 1975 ACJ 190 (Delhi). This is not contested by the learned Counsel for the respondents and it can be said that the evidence in this particular case is to be looked into in order to decide as to how the accident occurred and who could be made liable for the same.

16. The learned Single Judge of the High Court of Rajasthan in Chotu Lal and Anr. v. Chamali Bai and Ors. 1997 ACJ 508, has held that the claim petition cannot fail merely because there has been acquittal of the driver in the criminal case. The learned Single Judge has held as under:

It is well established legal principle that findings given in the criminal Court judgment cannot be taken aid and cannot be taken advantage in the civil or compensation claim matter. Therefore, the claim petition cannot fail merely because there has been an acquittal in the criminal case. The plea that the criminal case ended in acquittal and, therefore, the compensation claim must follow suit cannot be accepted and as such rejected.

17. The learned Single Judge of the High Court of Madhya Pradesh in Dharamvir Singh Punjabi and Another Vs. Raghuvar and Another, has held that the acquittal of the driver in the criminal trial is not binding upon the Claims Tribunals. The learned Single Judge has held as under:

Attention of this Court was drawn to the fact that the driver of the tractor was tried for a criminal offence u/s 304-A, Indian Penal Code and that case ended in acquittal in S.T. No. 131 of 1989. Judgment of S.T. No. 131 of 1989 is filed on record in which benefit of doubt has been given to the accused in view of the fact that Sarupibai fell down from the tractor that could be by her own mistake, drowsiness or inadvertence. The findings recorded in the said sessions trial, however, were not assailed in appeal and it had become final. The findings recorded in the said sessions trial only have given benefit of doubt to the accused. That is not binding upon the Claims Tribunal to accept the same as such. The Claims Tribunal has assessed the facts and the evidence led in the claim case on their merits and came to the conclusion that rash and negligent driving by the driver was proved on record.

18. In view of the definitive law laid down by their Lordships of the Hon"ble Supreme Court and the judgments cited hereinabove, it is now well settled law that the acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accidents Claims Tribunal whether the driver was negligent or not in causing the accident. In the present case, as discussed hereinabove, the appellants have taken contradictory stand before the learned Motor Accident Claims Tribunal the manner in which the accident has taken place. The learned Motor Accidents Claims Tribunal on the basis of the evidence led by the parties had come to a just conclusion that respondent No. 3 was responsible for causing the accident on 22.1.1998. These findings are upheld.

19. Now, the Court has to consider whether the compensation awarded by the learned Motor Accidents Claims Tribunal is in accordance with law or not. It is not disputed by the parties that Sh. Dilbag Singh remained admitted in the Hospital with effect from 22.1.1998 to 27.1.1998. He suffered multiple injuries and his disability has been assessed to the extent of 25% as per Ex.PB. According to the statements of PW-1 Jarnail Singh and PW-2 Smt. Bachni Devi Sh. Dilbag Singh used to sell the vegetables being the vegetables dealer. The claimants have not conclusively proved the income of Sh. Dilbag Singh. The learned Motor Accidents Claims Tribunal had drawn a just conclusion that he might have been earning Rs. 70 per day in the year 1998 by selling vegetables. The learned Motor Accident Claims Tribunal has rightly awarded a sum of Rs. 84,000 towards loss of earning for a period of 40 months taking into consideration his monthly income @ Rs. 2,100 per month and his disability to the extent of 25%. A sum of Rs. 8,616 awarded towards medical expenses is reasonable amount and need not be interfered by this Court. A sum of Rs. 10,000 awarded towards pain and suffering and a sum of Rs. 11,000 paid on account of shortened expectation of life are in accordance with law. Since Dilbag Singh was a vegetable dealer, he was incapacitated to the extent of 25% by the injuries caused to him in the accident on 22.1.1998 and he was bound to engage the services of a servant. The learned Tribunal on this count has awarded a sum of Rs. 15,000 which is a reasonable amount. A sum of Rs. 12,000 paid for special diet need not be interfered with taking into consideration that Sh. Dilbag Singh remained hospitalized for six days

and thereafter he was taking treatment.

20. Accordingly, it is held that a sum of Rs. 1,51,816 awarded to the claimants is just and fair compensation and need not be interfered by this Court.

21. Consequently, there is no merit in this FAO and the same is dismissed. There shall be no order as to costs.