
(2004) 03 AHC CK 0264
In the Allahabad High Court
Case No : F.A.F.O. No. 780 of 1986

Kalloo and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Citation : (2004) 5 AWC 4900

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : Rajiv Sharma and V.S. Sharma, for the Appellant; J.P. Pandey and L.M. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Umeshwar Pandey, J.—This first appeal from order has been filed against the judgment and order dated 25.8.1986, passed by the Motor Accident Claims Tribunal, Bareilly (IIIrd Additional District Judge, Bareilly).

2. The brief facts are that a truck belonging to U.P. State Bridge Corporation had run over the deceased Munshi causing his instantaneous death. A claim petition was preferred by his heirs making (1) State of U.P.; (2) Chief Engineer, U.P. State Bridge Corporation, P.W.D., Lucknow; (3) M/s. New India Assurance Co. Ltd., Head Office, Bombay; (4) M/s. New India Assurance Co. Ltd., Branch Office, Kasganj, as the Respondent. After recording the entire evidence led from both the parties, the court below heard the case finally. On having found that the U.P. State Bridge Corporation, while not made Respondent in the case being a necessary party, the claim petition was dismissed as not maintainable and the impugned order was passed.

3. Against the aforesaid judgment, this appeal has been preferred.

4. I have heard Sri. Rajiv Sharma, learned Counsel for the claimant-Appellants and Sri. J.P. Pandey, learned Counsel for the Respondent No. 2 Chief Engineer, U.P. State Bridge Corporation, P.W.D., Lucknow.

5. On the basis of the pleadings of the party as many as ten issues have been framed in this case and issue Nos. 2, 3 and 4 related to the plea of the petition being bad for the misjoinder and non-joinder of parties. The court below, while holding that there is non-joinder of U.P. State Bridge Corporation, the owner of the offending vehicle in the claim petition, came to the conclusion that the owner of the offending vehicle, being not a party to the claim, no award for making payment of compensation could be given in the case. It is under these circumstances that the Tribunal has dismissed the petition.

6. Issue Nos. 2, 3 and 4, referred to above, which relate to misjoinder and non-joinder of the parties and all such issues required disposal as preliminary issues by the Tribunal trying the matter. In the present case, it appears that the Tribunal has, without resorting to the aforesaid formality of taking up these issues as preliminary issues, preferred to take up the same at the final stage of the proceedings, while disposing of the entire claim. This approach of the Tribunal does not appear to be legally correct. If these issues would have been decided as preliminary issues, an opportunity would have been available to the claimants-Appellants for making necessary amendment in the claim petition. But the approach of the Tribunal, being otherwise, an order has been passed dismissing the claim petition and it has virtually resulted into miscarriage of justice. In a case where the accident is proved, entitlement of the claimants to compensation is proved, but when the same is being denied simply for want of certain formalities, it will not be treated as a just and proper approach to judicial matter by the Court. In fact, there has been a contest from the side of the unnecessary party, i.e., Chief Engineer, U.P. State Bridge Corporation, who claims to have done everything in personal capacity but not on behalf of the U.P. State Bridge Corporation itself. This simple formal requirement, which was left over in the case was that of impleading the U.P. State Bridge Corporation as a party to the claim petition and nothing else.

7. In the aforesaid view of the matter and on the circumstances and the facts as detailed above, it appears to be just and proper that the impugned judgment and order passed by the Tribunal should be set aside and a direction should be given to the court below to permit the claimant-Appellants to move for an amendment and to incorporate U.P. State Bridge Corporation as a party in the claim petition.

8. In the circumstances and on the facts as discussed above, the appeal is allowed with no order as to costs and the judgment and order dated 25.8.1986, passed by the Motor Accident Claims Tribunal (IIIrd Additional District Judge), Bareilly, is set aside. The case is sent back to the Tribunal to register it on its number and to direct the claimants-Appellants to move formal application for amendment to incorporate U.P. State Bridge Corporation as a Respondent in the claim petition and thereafter to decide the case on the evidence available on record. The U.P. State Bridge Corporation though not formally represented, yet the Chief Engineer, having contested the petition, it shall not require fresh service upon the added Respondent but if some fresh written statement is filed,

the opportunity to meet the same will be given to the Appellant claimant and the same be decided preferably within a fortnight. Obviously, the U.P. State Bridge Corporation, the newly added Respondent, shall be permitted to lead evidence also if it so opts, by the court below. The whole matter shall be decided by the Tribunal within a period of six months from the date of filing a certified copy of this judgment.