

(2005) 11 RAJ CK 0064

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 101 of 1994

Kamla (Smt.) and Others

APPELLANT

Vs

Nathu Lal and Others

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Motor Vehicles Act, 1939 — Section 110A, 170

Citation : (2006) 1 ACC 453 : (2006) 1 RLW 316 : (2006) 1 WLC 156

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : Vinay Mathur, for the Appellant; Vinod Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—The claimants - appellants have filed this appeal against the judgment/award dated 8.10.1993 passed by the Motor Accident Claims Tribunal (I) Ajmer in Motor Accident Claims Case No. 53 of 1983, whereby the claim application filed by the claimants-appellants was dismissed.

2. The claimants-appellants filed an application u/s 110-A of the Motor Vehicles Act, 1939 for compensation before the Motor Accident Claims Tribunal, Ajmer in respect of death of Kanha, who died in motor accident, took place on 11.2.1983. The claim application was filed against the driver and owner of vehicle Nathu Lal and Prem Kumar respectively and the National Insurance Company Limited.

3. The driver Nathu Lal and owner Prem Kumar filed their joint reply to the application for compensation, wherein they contested the application and submitted that there was no negligence on the part of driver of the vehicle. The monthly income of the deceased was also denied. In para No. 6 of the reply, it was submitted that the vehicle was insured with the National Insurance Company.

4. The National Insurance Company filed its written reply to the claim application and submitted that the vehicle involved in the accident, the owner of which has

been pleaded to be Prem Kumar, is in fact insured in the name of Ram Narain Gupta, the registered owner of the vehicle. It was also submitted that insured Ram Narain gupta has not been impleaded as a party and as such the insurance company is not liable to indemnify and liability of a person other than insured. A copy of insurance cover note of the vehicle was also placed on record showing the name of insured Ram Narain. n para No. 6 of the reply of the Insurance Company, it was specifically submitted that the vehicle No. RJR-4073 was insured in the name of Ram Narain gupta and he had already transferred the said vehicle. The insured had no interest in the vehicle on the date of accident and as such the insurance company is not liable to indemnify the liability of compensation.

5. Learned Tribunal framed 11 issues and fixed the case for applicant's evidence. However, inspite of number of opportunities given to claimants for producing evidence, the same was not produced. Hence, the evidence of the applicants was closed on 18.2.1993: The applicant thereafter moved an application on 19.5.1993 for allowing the applicants to led evidence. The said application was dismissed by the Tribunal vide order dated 22.9.1993. The non-applicants No. 1 & 2 submitted on 22.9.1993 that they do not want to produce any evidence. The non-applicant No. 3 the insurance company moved an application No. 3 the insurance company moved an application u/s 170 of the M.V. Act to allow the Insurance Company to contest the matter on merits as non-applicants No. 1 & 2 are not contesting the matter. The Tribunal dismissed the application on 22.9.1993 observing that the non-applicant Nos. 1 & 2 are duly represented by their counsel and they have also filed reply to the claim application and from the very beginning they are contesting the matter. The insurance policy was placed on record which was admitted by counsel for applicants and as such it was exhibited d-1. The non- applicant No. 3 did not produce any other oral or documentary evidence and close its evidence. The Tribunal therefore, fixed the case for final arguments.

6. After considering the submissions of learned counsel for the parties, the Tribunal dismissed the claim application filed by claimant appellants vide impugned judgment dated 8.10.1993. Being aggrieved with the same, the present appeal has been filed before this Court.

7. I have considered the submissions of the learned counsel for the parties and examined the impugned judgment as well as the record of the Tribunal.

8. There is no dispute that none of the parties i.e. claimants or non-claimants, produced and oral or documentary evidence except Insurance Cover Note Ex. D-1 produced by Insurance company. The certified copies of FIR, Post Mortem Report and Charge-sheet were filed, but they were not put up for admission on denial and they were not marked exhibit in the case. In absence of oral and documentary evidence, the learned Tribunal observed that the certified copies of the FIR, post-mortem report and charge-sheet were admissible in evidence in the claim application and accordingly on that basis held that accident took place

because of negligence of the vehicle's driver non-applicant No. 1 Nathu Lal and claimants have suffered "loss of income" and "love and affection" due to death of deceased in this motor accident and for the same assessed the total amount of compensation under the different heads as Rs. 1,00,000/-. However, while deciding the issue Nos. 7 & 9, the learned Tribunal observed that the registration certificate of the vehicle has not been produced, therefore, it cannot be said that the non-applicant No. 2 Prem Kumar is the owner of the vehicle. The insurance policy, Ex.D-1 which has been produced shows that the name of insured is Ram Narain Gupta, therefore, as per insurance policy, it cannot be said that the non-applicant No. 2 Prem Kumar is the owner of the vehicle. Shri Ram Narain Gupta has not been impleaded as a party in the claim application. The insurance of the vehicle was not got done by Prem Kumar, non-applicant No. 2. In absence of evidence it cannot be held that non-applicant No. 1 driver was in the employment of non-applicant No. 2. Consequently, issues No. 7 & 9 were decided against the applicants and in favour of the non-applicants.

9. The appellants filed an appeal in this Court on 20.12.1993, along with the application under Order 1 Rule 10 read with Section 151 CPC seeking permission for impleading the registered owner Ram Narain Gupta as a party respondent No. 2/2 in the memo of appeal. The order sheets of this court shows that no order was passed on the application dated 20.12.1993 seeking permission to implead Ram Narain as party respondent No. 2/2 in appeal. However, the appeal was admitted by this Court on 23.9.1994 and notices were ordered to be issued to the respondents. Ram Narain Gupta was impleaded as respondent No. 2/2 in the memo of appeal without any order on the application filed on 20.12.1993, therefore, notice of the appeal, was also served on Shri Ram Narain. After service of notice upon the respondent No. 2/1 Prem Kumar entered his appearance in this Court through his advocate on 19.3.1996 and Ram Narain respondent No. 2/2 entered his appearance in this Court on 7.7.95 through his advocate.

10. During pendency of this appeal, learned counsel for the respondent No. 2/2 Ram Narain submitted before this Court on 28.8.2003 that the respondent No. 2/2 Ram Narain Gupta, (Registered owner of the vehicle) has expired. However, learned counsel for the appellant submitted that he does not want to bring his legal representatives on record. The order dated 28.8.2003 is reproduced as under:

Learned counsel Shri Bhargava submits that respondent No. 2/2 Ram Narain has expired. Learned counsel for the appellant does not want to bring his LRs. on record. As prayed by learned counsel for the respondent No. 2/1 Prem Kumar copy of CMA be given today. List it for hearing on 23.10.2003 as prayed.

11. On 28.2.2005 learned counsel for the respondent No. 2/1 Prem Kumar submitted that Prem Kumar has expired. This Court granted two week's time to the appellant to file an application for bringing legal representatives of Prem Kumar on record. Learned counsel for the appellant did not file any application

for bringing the legal representatives of 2/1 Prem Kumar on record, but moved an application on 29.8.2005 to delete the name of respondent No. 2/1. The said application was listed before this Court on 8.9.2005 and the same was allowed and the name of respondent No. 2/1 Prem Kumar was deleted. The order dated 8.9.2005 is reproduced as under:

Learned counsel for the appellants vide application dated 29.8.2005 has prayed for deletion of the name of respondent No. 2/1 Prem Kumar, since he has expired.

Learned counsel for the respondents do not oppose the said application.

Hence, the application is allowed and the name of respondent No. 2/1 Prem Kumar is ordered to be deleted from the array of respondents.

12. Learned counsel for the claimant appellants contended that as per contents of FIR name of owner of vehicle was mentioned as Prem Kumar, therefore, the claim application was filed impleading Prem Kumar as non-applicant. He further contended that although from the reply of the insurance company he came to know about the name of insured as Ram Narain Gupta, but in absence of proper description of Ram Narain he was not impleaded as non-applicant in the claim petition. He further contended that Ram Narain transferred his vehicle to Prem Kumar, who was real owner of the vehicle on the date of accident. The vehicle was insured on the date of accident. He further contended that he has moved an application before this court for impleading Ram Narain as a appellant and notice was served upon Ram Narain Gupta. The learned Tribunal has already recorded a finding on the basis of certified copies of the FIR, post-mortem report and charge-sheet, that accident took place because of negligence on the part of vehicle driver Nathu Lal. Therefore, in these circumstances, the findings of the learned Tribunal in respect of issues No. 7 & 8 be set aside and claim application be allowed and award be passed in favour of the claimant appellants.

13. Learned counsel for the insurance company contended that this is a case wherein neither the statement of applicant was recorded nor the statements of any eye-witnesses to prove the accident or to prove the negligence of the vehicle's driver Nathu Lal, in driving the vehicle has been recorded. The statement of doctor has not been recorded to prove that the deceased Kanha died in motor accident. He also contended that the learned Tribunal committed an illegality in recording the findings about the negligence on the part of the driver and in recording a finding about compensation of Rs. 1,00,000/- without any oral or documentary evidence on record. He contended that the application for compensation cannot be allowed without any proper evidence and only on the basis of the pleadings of the parties.

14. I have considered the submissions of the learned counsel for both the parties and examined the impugned judgment and the entire record of the Tribunal.

15. It is clear that the none of the parties produced oral or documentary evidence in the present case before the Tribunal except admission of the

insurance policy which was marked as Ex.D-1. The learned Tribunal was right in recording the findings in respect of issue Nos. 7 & 9 to the effect that from the record it is not proved that Prem Kumar was owner of the vehicle. Shri Ram Narain Gupta, insured as per Ex.D-1, was not impleaded as a party non-claimant In spite of specific objections by the Insurance company In the reply. The registration certificate of the vehicle to show the name of the owner of the vehicle was not placed on record, therefore, the fact that the Prem Kumar was owner of the vehicle was not established. The name of insured was Ram Narain, but he was not impleaded as a party, therefore, there is nothing wrong in recording a findings on the part of the Tribunal.

16. The appellant filed an application to allow him to implead Ram Narain Gupta as respondent No. 2/2 in the memo of appeal, but without passing any order on that application, the memo of appeal was filed impleading Ram Narain Gupta as party respondent No. 2/2 when appeal was listed before this Court for Admission than it was a duty of the appellant to bring this fact to the notice of this Court that Ram Narain Gupta was not a party in the Tribunal and the application has been filed along with appeal to implead him as respondent No. 2/2. This Court admitted the appeal and notice was issued to Ram Narain Gupta also as in the memo of appeal he was impleaded as respondent No. 2. After admission of appeal and notice of appeal issued to Ram Narain Gupta, the application to implead Ram Narain Gupta as respondent No. 2, is treated as impliedly allowed, otherwise at present no order can be passed on that application as Ram Narain Gupta has already expired. Now position of case has become more worst than the position in the Tribunal. Ram Narain Gupta registered owner of the vehicle was impleaded as respondent No. 2 in the appeal, but he expired during the pendency of this appeal and counsel for the appellant stated before this Court on 28.8.2003 that he does not want to bring his legal representatives on record. So far as Prem Kumar is concerned, the counsel for the appellant moved an application before this Court to delete his name from the array of respondents. This Court vide order dated 8.9.2005 allowed the application and name of respondent No. 2/1 Prem Kumar was ordered to be deleted from the array of respondents. In these circumstances, the so-called actual or registered owner of the vehicle is not a party in this appeal. The claimant's did not adduce any oral evidence in the case. The fact of transfer of vehicle from Ram Narain Gupta to Prem Kumar is also not proved from any oral or documentary evidence. In these circumstances, I do not find this appeal to be fit one to allow and remand the case to the Tribunal as submitted by the learned counsel for appellant.

17. In view of the above, there is no merit in any of the submission of the learned counsel for the appellant. Consequently, the appeal is devoid of merit and the same is dismissed with no order as to costs.