

(2009) 04 DEL CK 0264
In the Delhi High Court
Case No : F.A.O. No. 240 of 2000

Kesho Ram and Others

APPELLANT

Vs

Joga Ram and Others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Evidence Act, 1872 — Section 56
Motor Vehicles Act, 1988 — Section 165, 166

Citation : (2010) ACJ 1852 : AIR 2009 Delhi 157

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : J.S. Kanwar, for the Appellant;

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 2/3/2000 of the Motor Accident Claims Tribunal whereby the Tribunal dismissed the claim petition without awarding any compensation.

2. The brief conspectus of the facts is as follows:

3. On 12/9/1988 at about 4.55pm, the deceased Sh. Rajeev Kumar Sharma, aged about 25 years, boarded the bus bearing registration No. DEP 4391 plying on route No. 320 from Shahdara bus stand and he was to alight at Kariti Nagar bus stand near Swarn talkies". As the bus started, a bomb blast occurred inside the bus as a result of which, Sh. Rajeev Kumar received grievous injuries on his person, which resulted in his death. A claim petition was filed on 10/3/1989 and an award was made on 2/3/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. The sole ground on which the claim petition was dismissed was that the appellant claimant failed to prove the negligence of the driver.

5. The counsel for the appellants contended that the tribunal dismissed the claim petition in ignorance of the judgment of the Hon'ble Apex Court in Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., The counsel also urged that the

tribunal erred in holding that the appellant was unable to prove negligence of the driver of the bus.

6. Nobody has been appearing for the respondents.

7. I have heard counsel for the appellant and perused the record and the aforesaid judgment.

8. In the present case the accident took place when a bomb exploded inside the bus when the bus moved from Shahdara bus stand. At the relevant time Delhi was also under the sway of Sikh related violence, which was in full swing in northern India and the same was a matter of judicial notice. It is a celebrated rule of evidence that a fact, of which the court will take judicial notice, need not be proved and the said principle is enshrined in Section 56 of The Indian Evidence Act, 1872. Thus, it was not necessary for the appellants claimants to prove the negligence of the driver and the conductor. In such a situation, where the Sikh militant activities were daily in newspaper, it was necessary for the Court to take judicial notice of the same. It was equally necessary for the bus conductors and drivers to take extra care, so that no mishappening occurs in the bus. The degree of diligence and vigilance expected of the bus conductor and driver was found lacking in the instant case, but the learned tribunal while deciding the matter ignored this aspect.

9. In the present case, the claim petition was preferred u/s 166 of the Act, the petitioner would have to satisfy the Tribunal (a) that an accident arose out of the use of a motor vehicle, (b) which resulted in the death or bodily injury of a person or damages to any property, of a third party so arising, or both, (c) due to the negligence of the driver and that (d) the claim is made against the owner and Insurer of the motor vehicle involved in the accident. Therefore, it is essential for the maintainability of a claim u/s 166 that the accident arose out of the "use" of a motor vehicle. The expression "use of a motor vehicle" in Section 165 covers accidents which occur both when the vehicle is in motion and when it is stationary.

10. In the instant case all the Ingredients necessary for maintainability of the claim u/s 166 was existent, but still the tribunal erred in not awarding compensation. In the present case a young lad of 25 years has expired and death of a child, of whatever age leaves the parents in great agony and sufferings, the tribunal ought to have taken care In decision-making.

11. The Motor Vehicles Act indisputably is in the nature of social welfare legislation. The relevant provisions of the Act are beneficial in nature. It is settled law that to prevent Injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction.

12. In cases of fatal accidents the entire family of the deceased is affected and the loss suffered by the entire family cannot be restored, the courts should give

technicalities a go by and concentrate on fair play. The approach in awarding compensation has to be broadly based on the principles of justice, equity and good conscience and technicalities in the decision-making should be avoided.

13. In view of the above discussion the matter is remanded back to the tribunal for deciding the present petition within six months from the date of this order.