
(2009) 07 DEL CK 0204
In the Delhi High Court
Case No : FAO. No. 857 of 2003

Kumari Rosy @ Rajee

APPELLANT

Vs

Gulshan Bhatia and Others

RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Delhi Motor Vehicles Rules, 1993 — Rule 118, 118(7)
Evidence Act, 1872 — Section 121, 122, 123, 124, 125
Motor Vehicles Act, 1988 — Section 168, 169

Citation : (2009) 6 ILR Delhi 607

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Amit Kumar Pandey, for the Appellant; L.K. Tyagi, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby the claim petition was dismissed.

2. The accident dated 4th January, 1997 resulted in injuries to the appellant. The appellant was 9 years old at the time of the accident when she was hit by offending car and she suffered fracture in left foot in respect of which she filed the claim petition before the learned Tribunal. The learned Tribunal dismissed the claim petition on the ground that the appellant received only minor injuries and the claim petition has been filed on the false averments.

3. The learned Counsel for the appellant submits that the appellant examined four witnesses before the learned Tribunal. PW-1 is the record clerk from Hindu Rao Hospital who proved the medical record ? Ex.PW1/1 to Ex.PW1/6. The learned Counsel for the appellant refers to the discharge summary dated 9th January, 1997 where the patient's name has been clearly mentioned as Rajee, 9 years/female MRD No. 359 admitted as a case of - (fracture) phalanges III, IV, V (R) foot c (with) CLW with swelling, stitching of wound done and B/K (below knee), POP Slab (R) applied and dressing of wound done on 4th January, 1997

and patient was discharged on 9th January, 1997. The learned Counsel for the appellant further submits that the eye-witness Raju was examined as PW-2 who proved the accident in question. The mother of the appellant appeared as PW-3 and proved the original prescription slips - Ex.P1 to Ex.P17. The copies of the challan, site plan, MLC, MER and driving licence were proved as Ex.P12 to P16. The doctor treating the appellant was examined as PW-4 and he proved the prescriptions P-2 to P-17 and Ex.PW4/1 to Ex.PW4/11.

4. The learned Tribunal has not correctly appreciated the evidence led by the appellant which clearly shows that the appellant suffered a fracture in left foot. u/s 168 of the Motor Vehicles Act, the learned Tribunal has to conduct an enquiry into the claim. Scope of Section 168 of the Motor Vehicles Act, 1988 and Section 165 of the Indian Evidence Act, 1872 has been discussed by this Court in the case bearing FAO No. 884/2003 titled Somari Devi v. Ragwar Singh decided on 22nd May, 2009. The relevant portion of the judgment is reproduced hereunder-

Section 168 provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunal shall follow such summary procedure as it thinks fit subject to the Rules made in that behalf. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rule 118 of Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the claims Tribunal. Rule 118(7) provides that the claims Tribunal may during the course of enquiry visit the site of accident or examine any person likely to be able to give information relevant to the proceedings.

9. The scheme of the Motor Vehicles Act and the Rules is that the Tribunal has to conduct an inquiry into the claim and a summary procedure has to be evolved. The Act as well as Rules nowhere use the word "trial".

10. In the case of Saramma Scaria Vs. Mathai, , the Kerala High Court observed as under:

4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs" of the deceased. Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, Supreme Court has reminded the Claim Tribunals stating as follows:

Road accidents are one of the top killers in our country, specially, when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents

Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here and some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes.

11. In *Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala*, , the division bench of Gujarat High Court observed as under:

The thrust of the attack on judicial values is not so much that judges are consciously prejudiced, but that they are subconsciously influenced by the fact that they come from a narrow social stratum and reflect the values of a minority class. There can be no question but that subconscious influences of this kind do exist, but the submission made here is that the charge is prone to exaggeration. In the first place, if subconscious influences are taken into account, as indeed they should be, then account should be taken of all such influences, including those that tend to counteract and minimize prejudice. One of these is fidelity to rules, principles and doctrines. Even if a judge were to have some prejudice and wants to give effect to it, he has to do so as plausibly as possible within the framework of rules, the leeways of doing so are not unlimited and this does operate as a brake on personal prejudice. It has to be remembered that cases are argued, often with great ingenuity, by Counsel, and if one side puts forward an interpretation of a statutory provision or a precedent, which cannot be countered plausibly, the judge has to decide accordingly, however much his own wishes are to the contrary.

12. The learned Tribunal could have invoked Section 165 of the Indian Evidence Act which is reproduced hereunder:

Section 165. Judge's Power

To put Questions or Order Production-

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask u/s 148 or 149; nor shall he dispense with

primary evidence of any document, except in the cases herein before excepted.

13. This Section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

14. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15. Mr. Edmund Burke arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and that duty is to investigate the truth. If no prosecutor appears, the Court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done effectively, and to act his own part in it.

16. In *Bartly v. State* 55 Nebr 294 : 75 N.W. 832 Harrison, C.J., said:

It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness.

17. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

18. The framers of the Act, in the Report of the Select Committee published on 1st July, 1871 along with the Bill settled by them, observed as follows:

Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal. That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a

well-educated Bar, co- operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases ? probably the vast numerical majority ? the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly than he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter.

19. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.

5. The appeal is allowed and the impugned award is set aside and the case is remanded back to the learned Tribunal to conduct an enquiry in terms of Section 168 and Section 169 of the Motor Vehicles Act read with Rule 118(7) of the Delhi Motor Vehicle Rules read with Section 165 of the Indian Evidence Act.

6. The parties are directed to appear before the learned Tribunal on 10th August, 2009.