

(1999) 10 AHC CK 0124

In the Allahabad High Court

Case No : First Appeal From Order No. 1099 of 1999

Lakhan Singh Niranjana

APPELLANT

Vs

Ram Kesh

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2000) 1 ACC 287 : (2000) ACJ 575 : (2000) 1 AWC 26

Hon'ble Judges : D. K. Seth, J

Bench : Single Bench

Advocate : Dharam Pal Singh and P. K. Dubey, for the Appellant;

Final Decision : Dismissed

Judgement

D. K. Seth, J.—The award u/s 140 of the Motor Vehicle Act passed by the learned Special Judge, Oral in Original Suit No. 86 of 1993 on 8th September, 1999, has since been challenged in this appeal. Mr. D. P. Singh, learned counsel for the appellant contends that there was no evidence about the involvement of the truck in the alleged accident and as such, even though the said question is to be determined on summary proceeding, in the absence of any evidence, the award could not have been passed simply on the basis of the F.I.R. In support of his contention, he relied upon the decision in the case of Managing Director Transport Corporation Limited v. P. Saraswathi and others JT 992 ACJ 248. He also contends that in order to prove the involvement of the vehicle in the accident, some amount of evidence other than FIR would be necessary, when the accident itself is denied by the owner. He relied on the decision in the case of Sabir Hussain and others u. Abdul Rahman, Driver. 1991 (1) TAG 538.

2. I have heard Mr. D. P. Singh at length.

3. Section 140 of the Act prescribes for no fault liability in certain cases, The provisions of the said Section makes it incumbent on the owner of the vehicle involved in the accident for payment of compensation even though no fault could

be ascribed to him. Therefore, the only exception that has been provided in the said Section is to the extent that it is not necessary to establish a fault of the driver or the owner. It also contemplates exception of contributory negligence. Thus, it remains that at least there must be some proof about the accident and involvement of the vehicle in the accident and that the person is the owner of the vehicle. If these three conditions are fulfilled, in that event the other conditions relating to the fault of contributory negligence would be irrelevant.

4. In the objection the appellant had contended that he is neither the owner of the vehicle nor the vehicle was involved in the accident. If he is not the owner of the vehicle, he cannot say whether the vehicle was involved in the accident or not. Therefore, these two defences cannot go together. On the other hand, from the order appealed against, it appears that there were materials before the Court to show that the appellant had applied for release of the vehicle, which was seized in connection with the criminal case that was lodged against him arising out of the alleged accident claiming himself to be the owner of the vehicle and had got the vehicle released. These documents, therefore, clearly prove that he is the owner of the vehicle. Thus, it clearly establishes that the appellant was not telling the truth when he is claiming that he is not the owner of the vehicle. Therefore, no trust can be reposed on him with regard to the question that the vehicle was not involved in the accident. The proceeding is summary proceeding. Therefore, it does not lie on the appellant to say that the vehicle was not involved in the accident when prima facie he is the owner of the same, contrary to his claim that he was not the owner.

The proceeding u/s 140 of the Act is admittedly summary proceeding, which does not require a regular proceeding or establishment of all the facts alleged as has been held in the case of *Sabir Husain* (supra). This Court had taken the view that these provisions are benevolent legislation. It is the duty of the Court to advance the object of the enactment and not to frustrate by prolonged and delayed enquiry. The object is that the heirs and kith and kin of the deceased may be given compensation so that they may be able to overcome the calamity for the time being. It was further observed in the said decision that the requirement is that the vehicle was involved in the accident is prima facie established from the material on record. The above decision does not lay down that regular evidence is to be taken. If there are materials on record, in that event if the Court comes to a conclusion that the fact is prima facie established, it is open to the Court to award such compensation. But, however, it had recorded an exception to the extent that where the accident is denied, in that event, evidence of the parties are required to be taken. In the present case it is contended by Mr. Singh that no oral evidence was adduced by the claimants. On the other hand, the Court had relied on certain documents relating to inquest report where it was found that the death had occurred due to an accident. In this case, the appellant has not come with clean hands. Inasmuch as the appellant had denied the ownership of the vehicle, in his objection to both the proceedings to the claim as well as in the proceedings u/s 140 of the Act, denying the liability,

as is apparent from paragraph 3 of the objection filed on 2nd April, 1996 and paragraph 4 of the objection filed on 29th May, 1999, though, however, the number of the truck has been misprinted in the said paragraph as 3451 instead of 3491. In such circumstances, it is open to the Court to rely on the materials available on the record to come to a conclusion that the fact of the accident and involvement of the vehicle and the ownership of the defendant is established. In the present case the Court had not relied upon the F.I.R. alone which was the case in the case of P. Sarasathi (supra) of the Madras High Court and as such the ratio decided therein cannot be attracted in the present case in view of the presence of the materials, other than F.I.R.. on record.

5. Though in the case of Sabir Husain (supra), it was laid down that the evidence of the claimant is required to establish the involvement of the vehicle where the accident is denied. But in peculiar facts and circumstances of the present case where the appellant has not come With clean hands and had made an allegation which is untrue, it is open at this stage for the Court even to come to a finding against the defendant for the purpose of decision u/s 140 of the Act. If this matter is prolonged and delayed, the object would definitely be frustrated and would not advance the object of incorporation of such a provision in the Act itself. It appears that the materials on record justify the conclusion of the trial court as to the fact of prima facie establishment of the involvement of the vehicle in the accident.

6. So far the other two ingredients, namely, the ownership and the death is concerned, those having been proved, there is no infirmity in the order passed by the learned Tribunal. Therefore, I am not inclined to Interfere with the order.

7. The appeal, therefore, fails and is accordingly dismissed. No cost.

8. Mr. D.P. Singh at this stage submits that the appellant had deposited Rs. 12,500 in this Court in connection with this appeal. The appellant will be at liberty to withdraw the amount deposited in this Court. If such an application is made, the amount shall be allowed to be withdrawn within a period of two weeks from the date of such application. The appellant shall deposit the amount awarded before the learned Tribunal within a period of one month from this date.

9. However, any observations made by the Tribunal or by this Court in the present order should not be taken note of for the puipose of determining the matter on merits about the contentions raised by the parties, which is to be established on evidence at the time of trial.