
(2012) 08 AHC CK 0020

In the Allahabad High Court

Case No : First Appeal From Order No. 761 of 2001

Lekhraj And Others

APPELLANT

Vs

Bhudutt Singh And Others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2012) 10 ADJ 114 : (2013) 2 ALJ 125 : (2013) 1 AWC 909

Hon'ble Judges : Rakesh Tiwari, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : K.K. Shukla, Rajiv Sharma and Pankaj Shukla, for the Appellant;
Amit Singh, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Anil Kumar Sharma, J.—Challenge in this appeal is to the judgment and order dated 14.3.2001 passed by MACT/Additional District Judge, Court No. 10, Aligarh in MACP No. 384 of 1998 whereby the claim petition of the appellants has been dismissed. It appears that deceased Ajay Kumar was driver on Tanker No. UP 85C-9127, which developed some defect on 1.10.1998 at about 11 p.m. While crossing the Bajna bridge on NH-2 within circle of P.S. Narhauili, Mathura, while it was being repaired by Ajay Kumar and his helper, the driver of truck No. HR 29C-6755 said to be driving the vehicle rashly and negligently hit the stationery tanker from behind, causing serious injuries to driver and persons travelling in the truck. The helper of the truck died at the spot. The truck driver leaving the vehicle at the spot made his escape good. Injured Ajay Kumar also died later on. It was stated in the petition that 25-years" old deceased was earning Rs. 6000/- per month. The parents of deceased Ajay Kumar claiming to be dependant on him, filed claim petition for an award of Rs. 8.50 lacs. against driver of truck and owner and insurer of both the vehicles. The claim petition was contested by opposite parties except the alleged driver of the truck.

2. The claimants examined Lekhraj PW 1 and Vigyan Singh PW 2 (help of tanker) in support of their case and filed several photo-copies of documents. The learned Tribunal after hearing parties' counsel has dismissed the claim petition mainly on the ground that in order to get compensation the claimants have made material interpolations in the photo-stat copies of documents filed by them and could not prove their case. Aggrieved the appellants have come up in appeal.

3. We have heard arguments of learned counsel for the appellants and respondent No. 2 and perused the record of the case carefully.

4. Learned counsel for the appellant has argued that the impugned award has been passed by the Tribunal without considering the evidence on record; that it failed to consider that Bhutt Singh, driver of offending truck did not file any written statement; that the Tribunal has held that truck No. HR 29C-6744 had dashed with vehicle UP 85C-9727 and driver Ajay Kumar died in the accident and even then the claim petition had been erroneously dismissed.

5. The claimants being the parents of unmarried deceased Ajay Kumar have filed the claim petition under Sections 140 and 166 Motor Vehicles Act. They have stated that the deceased suffered death on the spot. In order to succeed in a petition u/s 166 of the Act, it is imperative on the part of the claimants to prove that the accident had taken place due to rash and negligent driving of the offending vehicle and the deceased has not contributed in the accident.

6. The claimants have examined Vigyan Singh PW 2, helper of the deceased who had also allegedly sustained injuries in the accident. This witness has claimed himself to be eye-witness of the accident. He has stated in his deposition before the Tribunal that he was also injured in the accident, and had taken Ajay Kumar to District Hospital, Mathura where he died but in cross-examination he stated that he did not get himself medically examined in the hospital. This statement of this witness belies his stand that he was present at the spot. The claimants have stated that deceased succumbed to the injuries at the spot but PW 2 does not support this claim. If this witness has received injuries in the accident then why did he not examine himself, if at all he had gone to the hospital? His medico-legal examination report would have lent support of his being eye-witness of the accident. It is noteworthy that name of this witness also does not find place in the charge-sheet submitted by the police against driver of offending truck named Mohan. Thus, it is difficult to place reliance on his testimony about manner of accident. Vigyan Singh PW 2 claims himself to be employed as helper on the tanker which was being driven by the deceased, but significantly his name does not find place in the claim petition in any capacity nor the owner of the tanker in his written statement has stated that Vigyan Singh was working as helper on his tanker as his employee. This witness has stated in his cross-examination that he has passed intermediate and for a month he was working as helper and he does not know repairing work. He further admits that now i.e. at the time of recording his deposition before the Tribunal, he is sitting idle at home. Thus, the employment of Vigyan Singh PW 2 as helper on the tanker in question itself could

not be proved by the claimants through cogent and reliable evidence.

7. The case of the claimants is that at the time of accident deceased Ajay Kumar alongwith helper was repairing tanker at 11 p.m. on Bajna bridge on NH-2 and offending truck hit the tanker from behind causing injuries to driver and helper. The accident had taken place during night on national high way, which has one-way traffic. Although Vigyan Singh PW 2 has stated that dipper light of their tanker were on, but it has not come in his evidence that they had taken any precaution to let the other commuters on the road know that the tanker is stationery and parked as it has broke down. The road culture on high way requires that the driver of the vehicle should caution the other vehicular traffic by putting some bricks or branches of tree around the parked vehicle or keep a red light on, so that they may avoid the stationery vehicle. The high-ways are meant for speedy traffic. The place of accident is in the outskirts of Mathura city. During night the heavy vehicle on main roads or high-ways are increased as compared to day time. A person driving on high way would never expect that the vehicle ahead of him would suddenly stop or is parked being out of order. Vigyan Singh PW 2 has not stated that they had parked the vehicle by the side of the road. Since the accident took place on the over-bridge so there was no foot path or kachchi patri along the road. In such a situation the responsibility of the driver whose vehicle is stationary being out of order increases and he should take more care to give caution. It has come in the statement of PW 2 that at the time of accident deceased was repairing the truck by lying under it and he was lighting the torch. He has further stated that after impact of the truck, the tanker moved ahead about 10 feet and Ajay Kumar fell in front. This statement cannot be reconciled. If the deceased was lying under the tanker, then there was no occasion for him to have fallen in front and in such a situation the rear vehicles of his tanker would have run over him, but this is not the case of the claimants. Contrary to all this, the claimant No. 1 Lekhraj PW 1 had stated in cross-examination that at the time of accident, the deceased and helper were repairing the engine by opening the bonnet of the tanker. Moreover, if for the sake of arguments the statement of Vigyan Singh PW 2 is accepted that the deceased was repairing the truck by lying its underneath, then proper precautions were not taken either by the deceased or this witness because they very well knew that their tanker has broken down on busy Agra-Delhi national high-way. In this way this act of deceased amounts to gross negligence. An appellate Court has disadvantage of not having seen the demeanor of the witness at the time of recording his testimony. It has to rely upon the findings of the trial Court or the Tribunal unless it is shown that there is any perversity or certain facts having been escaped from its notice. Thus, the claimants have not been able to prove the rash and negligent driving of truck by its driver, the manner of accident, and presence of Vigyan Singh PW 2 at the spot.

8. The most important aspect of this case which has persuaded the Tribunal to discard the entire case of the claimants is that they have made significant interpolations in the certified copies of police documents. The Tribunal has found

that in the certified copies of FIR, post-mortem report of the deceased and charge-sheet. The copies were issued from Mathura Courts and on each of the document the particulars of case from which the copies have been issued are noted as "State v. Mohan Cr. No. 223/98 u/s 304A IPC P.S. Narhauri", but by making cutting the name of "Mohan" has been struck off and "Bhudutt" had been written. In the claim petition in array of parties opposite part No. 1 Sri Bhutt Singh s/o Shri Shiv Dayal r/o Hathin Gate, Nauh Road, Palwal, P.S. Palwal District Faridabad has been described as "owner and driver of truck No. HR 29C-6755, however, during investigation the police has found complicity of one "Mohan" and submitted charge-sheet against him, but the claimants in order to make their stand reliable have scored out the name of "Mohan" and have written "Bhudutt", showing that he has been charge-sheeted by the police. The Tribunal ought to have drawn appropriate criminal proceedings against the claimant after proper enquiry. However, in these circumstances, it cannot be said that the conclusion drawn by the Tribunal is erroneous. For the aforesaid reasons, we do not find any merits in the appeal, which is hereby dismissed. No orders to costs.