
(2004) 10 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 314 of 1995

Mamta (Kumari) and Another

APPELLANT

Vs

Sardar Bal Jeet Singh and Another

RESPONDENT

Date of Decision : 13-10-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(3)
Penal Code, 1860 (IPC) — Section 304A

Citation : (2005) 1 ACC 775 : (2005) 2 CivCC 499 : (2005) 2 RCR(Civil) 573 :
(2005) 2 RLW 930

Hon'ble Judges : R.P. Vyas, J

Bench : Single Bench

Advocate : Mahendra Goyal, for the Appellant; Sandeep Mathur, on behalf of
A.K. Luhadia for Respondent No. 1 and Vinod Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Vyas, J.—The instant appeal is directed against the Award dated January 24, 1995, passed by the Judge, Motor Accidents Claims Tribunal, Jaipur city, Jaipur, whereby the claim-petition of the claimants was dismissed.

2. Before I proceed to discuss the matter, it is relevant to mention the relevant facts of the claim petition. The claim petition was filed by minor Kumar Mamta D/o. Shambhu Dayal through her mother and guardian Smt. Geeta Sharma before the Tribunal Jaipur city, Jaipur, which was registered as MACT case No. 578/89.

3. The brief facts of the case are that claimants' father- Shambhu Dayal, who had been selected for training of Senior Teacher, was taking training at that relevant time of the accident and the training was likely to be completed in the months of May, 1979. After the training was over, if appointed as a Teacher, he was likely to get Rs. 700A per month.

4. On July 16, 1979, at 9.30 a.m., Shambhudayal has to leave for Mahapura. He went to the Bus Stand, where one Bus No. RRM 9927 was said to be ready to

leave for Mahapura. He boarded the bus. When the bus started, in the way, the Conductor asked for ticket, then Shambhudayal told that he would like to go to Mahapura. Then the Conductor told him that he had boarded a wrong bus, as the bus in question was going to Sirsi. Shambhudayal was suggested by the Conductor to get down from the Bus, because that Bus was not going to Mahapura. At that time, Shambhudayal requested the bus conductor to stop the bus, but the bus was not stopped by the conductor and he immediately said that you please get down from the bus. While the bus was in motion, the said Shambhudayal immediately got down from the bus and fell down. The bus ran over Shambhudayal during the course of getting down from the bus. Shambhudayal sustained serious injuries and, thereafter, he succumbed to his injuries in the hospital.

5. A criminal case vide FIR No. 95/97 was registered against the bus driver Banshilal S/o Sitaram in a competent court of jurisdiction u/s 304A, IPC.

6. After ten years of the accident, i.e. on June 1, 1989, a claim petition was filed before the Tribunal. In the said claim petition, the bus driver Banshilal was not impleaded as a party, but in the said claim petition, the owner of the bus respondent No. 1-Sardar Baljeet Singh and Insurance Company-respondent No. 2 were impleaded as the necessary parties and the relevant claim against both of them was filed.

7. The claimants claimed the amount for the loss of the income and salary near about Rs. 82,000/-, loss of future income Rs. 50,000/- and also claimed for loss of love and affection and future security Rs. 50,000/- and Rs. 10,000/- for funeral expenses. A total sum of Rs. 1,92,800/- was claimed.

8. No reply was filed by the owner of the bus-respondent No. 1 in the said claim petition Respondent No. 2-Insurance Company filed a reply and denied all the allegations as alleged in the claim petition by the claimants and further alleged that the Insurance Company is not liable as the insurance premium was not deposited at the time of accident but it was deposited after nine months on December 16, 1979, therefore, the insurance company is not liable to make any compensation, in any manner and they are not responsible. A further objection was raised that the claim petition is time barred and on that ground also, the claim petition is not maintainable. On February 25, 1995, a review petition was filed by the Insurance Company for reviewing the order dated January 24, 1995. The review petition was dismissed on February 9, 1996.

9. The Tribunal framed the five issues, which read as under :-

"1. Whether Shambhudayal died due to injuries received in accident due to rash and negligent driving of vehicle No. RRM 9927 by bus driver Banshilal of respondent No. 1 on 16.3.97 on Sarsar Chandra Road, Jaipur ?

2. Whether in view of the written preliminary objections of respondent No. 3-Insurance Company, it can be exempted from its liability. If not, then what is its

effect ?

3. Whether claimants can get any amount in question or any just amount. If so, then who is/are the claimants, how much amount, from which of the respondents and by which way ?

4. Whether on 16.3.79, the vehicle in question was not insured ?

5. Whether the application, being barred by limitation, is liable to be dismissed ?"

10. The evidence was led by the claimants-Kumari Mamta and her mother Smt. Geeta Devi and additional evidence was led by Radha Mohan Sharma and Manglaram, whereas the driver of the bus did not appear and no evidence was led by him. Eight documents Ex. 1 to Ex. 8 were produced by the claimants. Respondent No. 1-owner of the vehicle got examined himself and produced five documents Ex. NA-1 to Ex. NA-5 in support of his contention. The Insurance Company-Respondent No. 2 did not produce any certificate in support of its contention as well as documentary evidence. The claim petition was heard and the five issues were framed by the Tribunal.

11. Issues No. 1 and 5 were decided against the claimants. Remaining three issues were decided in favour of the claim petition vide its order dated January 24, 1995, on the basis that since issues No. 1 and 5 were decided against the claimants, therefore, they are not entitled to get any claim in the claim petition.

12. Being aggrieved by the judgment of the learned Tribunal dated January 24, 1995, the appellants have preferred the instant appeal before this Court.

13. I heard learned counsel for the claimants appellants and learned counsel for the respondents.

14. Learned counsel for the appellant-claimants contended that with regard to issue No. 1 the evidence has not been properly appreciated by the Tribunal. The eye-witnesses Radha Mohan and Mangla Ram have categorically stated that the conductor of the bus has advised Shambhudayal to get down from the moving bus as the bus was not going to a particular destination of Mahapura. They further stated that they also requested the conductor to stop the bus, but the said conductor did not stop the bus. The conductor was duty-bound and under obligation to stop the bus. When the bus was not stopped at the relevant time, then the deceased had no other alternate, except to get down from the bus. He was compelled to get down from the bus and during the course getting down from the moving bus, he fell down and the bus ran over him. In this view of the matter, a serious negligence is attributed on the part of the conductor and driver of the bus and it is very well revealed from the evidence led in support of the contention by the claimants, but the same has been discarded and a wrong presumption, without taking into consideration the preponderance of probability, has been drawn by the Tribunal.

15. He further contended that the Tribunal has also erred while observing that

the bus driver is not impleaded as a necessary party and on that very basis, the Tribunal has dismissed the claim petition but the learned counsel contended that there is a series of judgments in which the Apex Court and different High Courts have held that in the claim petition, the driver is not a necessary party. But that aspect has not been taken into consideration by the Tribunal.

16. It was vehemently argued by the learned counsel for the appellant-claimants that the learned Tribunal has seriously erred in dismissing the claim petition on the ground of period of limitation, which is per se illegal, because, at the time of the accident, the claimants were minor. Not only that, but also looking to the object of the Act with regard to the limitation, such flaw of limitation shall not come in the way while deciding the claim petition. Apart from that, proper determination of amount has not been made by the Tribunal.

17. So far as the ground of limitation is concerned, the learned counsel for the appellant has drawn my attention to the case of Dhannalal v. D.P. Vijayvargiya and Ors. 1 1996 ACC 608 (SC), In which it was held by their Lordships of the Supreme Court that when Sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which the accident has taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by the when Sub-section (3) of Section 166 was in force.

18. It need not be impressed that Parliament from time to time introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs. The Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place.

19. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation, although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from Tribunal to this Court. This right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If the had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the Amending Act, he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued upto this Court cannot be thrown out on the ground of limitation.

20. Learned counsel has also referred to the authorities with regard to limitations in The New India Assurance Co. Ltd. Vs. C. Padma and Another, Oriental Insurance Company Ltd. (The) Vs. Safi Mohd. @ Mohd. Safi and Others,

21. So far as issues burden of proof, rash and negligent driving of the driver,

contributory negligence and impleadment of driver as a necessary party, as well as liability of the insurance company are concerned, the learned counsel has referred to the decisions given in Smt. Chhotudi and Ors. v. Ganpat Ram and Anr. 1998 (2) T.A.C. 432 (Raj. 2), Kumar Mohamed Rafique (since deceased) by his heirs-appellants v. Municipal Corporation of Greater Bombay 11 (1986) ACC 42, Ram Pyari and Ors. v. Bharat Singh and Ors. 1996 ACC 162 , New India Assurance Co. Ltd. Vs. Jagannath Singh and Others, Shanti and Ors. v. Kastoor and Ors. 1988 (1) T.A.C. 548 and Makbool Ahmed and Ors. v. Bhura Lal and Ors. 1986 ACJ 219.

22. Lastly, learned counsel for the appellants contended that no reply was filed by the respondent No. 1 in the claim petition. There was no rebuttal from the owner of the bus, so the presumption would be drawn against him and the adverse inference required to be taken into consideration, but that it is not been taken into consideration and this argument has been discarded by the Tribunal, which is also per se illegal.

23. Learned counsel for the respondents have supported the judgment of the learned counsel Tribunal and submitted that the judgment is based on sound reasonings. The driver of the bus was not impleaded as a party in the claim petition and the claim petition was not signed by the mother of the claimants. The claim petition is time barred. No negligence on the part of the conductor or driver has been established as per issue No. 1. Therefore, the learned Tribunal, after taking into consideration at the oral as well as documentary evidence available on record, has dismissed the claim petition of the claimants.

24. It may be mentioned that no evidence has been led by the Insurance Company, nor any requisite document with regard to the insurance of the vehicle has been filed. Not only that, even review petition of the Insurance Company was dismissed by the Tribunal.

25. Taking into consideration all the circumstances of the aforesaid case and without making any comments on the merits of the case and in order to meet the ends of justice, I deem it just and proper to quash the Award dated January 24, 1995 and remand the matter back to the learned Motor Accidents Claims Tribunal, Jaipur City, Jaipur, with the direction to condone the delay in this case and decide the same afresh within a period of six months from the date of receipt of a certified copy of this order. The Tribunal is further directed to decide the case on the basis of the reappraisal of the evidence in question. No fresh evidence is required to be led in this case. Both the parties are directed to appear before the Tribunal on October 25, 2004. The parties are expected to co-operate with the learned Tribunal in deciding the claim petition as expeditiously as possible within the aforesaid stipulated period of six months.

26. Ordered accordingly.

27. The appeal stands disposed of as indicated above.