

(2010) 10 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 887 of 2009

Mst. Rani Khinchi and Others

APPELLANT

Vs

Kaluram and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2011) 1 TAC 213

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Having lost her husband and having lost the case before the Motor Accident Claims Tribunal, Alwar (hereinafter referred to as "the learned Tribunal") the Appellants, the wife and the children, have challenged the award dated 6th November, 2008.

2. The brief facts of the case are that on 31st July, 2002 while Ravinder Singh Tanwar was going on his motorcycle, bearing No. RJ-01-11, for attending his duty, suddenly a dumper bearing No. RJ-02-G-3697, which was being driven rashly and negligently, came and dashed against the said motorcycle. Resultantly, Ravinder Singh sustained injuries on various parts of the body, ultimately, he died. A claim petition was filed by the complainants. The Respondents contested the claim petition and denied the averments made by the Appellants. On the basis of the pleadings of the parties, the learned Tribunal framed as many as five issues. On behalf of the claimants, two witnesses were examined and various documents were exhibited. On the other hand, the Respondents did not produce any evidence. After hearing both the parties, the learned Tribunal, vide its award dated 6th November, 2008, decided the claim petition. Since the claim petition was dismissed, the Appellants have filed the present appeal before this Court.

3. Mr. Vinay Mathur, the learned Counsel for the Appellants, has vehemently

contended that the learned Tribunal has mis-appreciated the evidence which was readily available on record. According to A.W.2, Niranjana Lal, even in his cross-examination, he had clearly stated that his statement was indeed recorded by the police u/s 161, Code of Criminal Procedure. However, the learned Tribunal has held that Niranjana Lal's statement u/s 161, Code of Criminal Procedure were never recorded by the police. Thus, the learned Tribunal has erred in disbelieving the testimony of Niranjana Lal ostensibly on the ground that his statement was not recorded by the police. Obviously, the learned Tribunal has mis-read the evidence. The conclusion drawn by the learned Tribunal is contrary to the evidence available on record. Secondly, the learned Tribunal has ignored the mechanical report which was submitted before it and was marked as Exhibit-13. According to mechanical report, the front side of bumper clearly showed that the number plate of the bumper was squashed, the radiator had been pushed back, the headlight of the driver side was broken, the radiator fan had entered into engine part, and there was blood on the left side of the tyre. According to the learned Counsel, clearly the dumper had met with a head on collision. This document corroborates the testimony of A.W.2. Since the learned Tribunal has overlooked Exhibit-13, it has failed to notice that Exhibit-13 indeed, corroborates the testimony of Niranjana Lal, A.W.2. Hence, the award suffers from mis-appreciation of evidence.

4. On the other hand, Ms. Chitra Goel, the learned Counsel for the Insurance Company, has strenuously argued that the learned Tribunal has correctly held that there was no negligence on the part of the driver. Therefore, the learned Tribunal had rightly rejected the claim petition.

5. The learned Counsel for Respondent Nos. 1 & 2 has also echoed the arguments of the learned Counsel for the Insurance Company.

6. Heard the learned Counsel for the parties and perused the impugned award and examined the record.

7. A bare perusal of the impugned award clearly reveals that the learned Tribunal has disbelieved the testimony of Niranjana Lal (A.W.2) ostensibly on the ground that although he claims to be an eye-witness of the accident, but he did not inform the police. In fact, the police was informed by Nand Lal Bairwa and that too in the evening while the accident had taken place in the morning. However, the learned Judge has misread the evidence on the point whether Nand Lal's statement had been recorded by the police or not? In his cross-examination, Nand Lal clearly states that in fact his statement was recorded by the police. Therefore, the conclusion drawn by the learned Tribunal that his statement was never recorded by the police is contrary to the evidence available on record.

8. Moreover, the learned Tribunal has failed to notice that the mechanical report (Ext.-13) clearly corroborates the statement of Niranjana Lal. According to Niranjana Lal, the accident was a head on collision. According to the mechanical report, the dumper was damaged from the front. Thus, this vital linking evidence

has totally been ignored by the learned Tribunal.

9. Hence, this Court quashes and sets aside the award dated 6th November, 2008, and remands the case back to the learned Tribunal for re-appreciation of the evidence. The learned Tribunal is directed to re-appreciate the evidence in proper perspective and to pass the necessary award within a period of two weeks from the date of receipt of certified copy of this judgment. The learned Tribunal is at liberty to re-appreciate the evidence strictly in accordance with law without being effected by the observations made by this Court.