
(2016) 02 RAJ CK 0138

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 1203 of 2005

Naresh Kumar Choudhary

APPELLANT

Vs

The Rajasthan State Road Transport Corporation and another

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2016) AAC 1933 : (2016) 2 DNJ 558 : (2016) 4 RLW 3204 : (2016) 4 TAC 275 : (2016) 3 WLC 229 : (2016) 1 WLN 510

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : J.P. Gupta, assisted by Rahul Sharma, Advocates, for the Appellant;
Kalyan Sahai Agarwal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Kanwaljit Singh Ahluwalia, J. - Naresh Kumar Choudhary, the appellant herein had filed a claim petition in the court of Motor Accident Claims Tribunal, Karauli (for short "the Tribunal") under Section 166 of the Motor Vehicles Act, 1988, wherein it was stated that he was aged 25 years and on 15.8.1995, he was travelling in Bus belonging to Rajasthan State Road Transport Corporation. The said bus was being driven by Ramratan Meena, the respondent No.2. It was further pleaded that on 15.8.1995, the bus was driven rashly and negligently by its driver and same collided with the Truck parked on the side of the road. As a result thereof, the appellant received various injuries and suffered a fracture of left hand. An operation was also carried by Plastic Surgeon and claimant had to incur lot of medical expenses. It was further pleaded in the petition that the claimant is a T.V. Serial actor and singer.

2. The claim petition filed by the appellant was dismissed by the Tribunal vide impugned judgment dated 19.1.2005. Aggrieved against the same, the present appeal has been filed.

3. The appellant-claimant presented on record injury statement (Exhibit-1), X-ray report (Exhibit-2), Medical Record of Safdarjag Hospital as Exhibit-3. The claimant had also tendered copy of FIR, site plan prepared in the criminal case, copy of the charge-sheet and mechanical report. However, certified copies of above documents were not filed.

4. Ramratan Meena, the respondent No.2, the driver of the bus which had met with an accident, appeared as NAW.1. The driver of the bus admitted that the incident had taken place. However, he stated that a truck was standing on the road carrying iron bars which were protruding out of the truck. It was further deposed by the witness that the iron bars protruding out of the truck had hit front window pane of the bus, resultantly, damage was caused. However, the driver of the bus denied sufferance of the injuries by any passenger.

5. The Tribunal in its award held that since the claimant has not filed certified copies of the FIR, charge-sheet, site plan, he has failed to prove that his name was included in the list of injured. It will be apposite to reproduce following finding returned by the Tribunal as under:-

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6. The learned counsel for the appellant has relied upon the judgment in the case of Bhagat Singh v. Jai Bhagwan and Ors., 2013 ACJ 1399, rendered by me as a Judge of Punjab and Haryana High Court. It will be apposite here to reproduce

the following portion of the judgment, as under:-

"This Court in "Surjit Kaur and others v. Sukhwinder Singh and others" (FAO No.701 of 1996, decided on 20th July, 2010) had noticed the provisions of Section 168 of the Act and had held that the enquiry under this Section is not the same as the trial under Codes of Civil or Criminal Procedure. This Court had further held that to give effect to the enquiry under Section 168 of the Act, the Tribunal under Section 169 of the Act can follow such a summary procedure as it thinks fit. In Surjit Kaur's case (supra), it was further held as under:

"Registration of the case; follow up action by the police; which includes inquest, postmortem, recovery of any documents from the spot, site plan of the spot prepared by the Investigating Officer or by the Draftsman; photographs, if any, of the spot, are various circumstances, which can help the Tribunal to take the enquiry to its logical conclusion."

It will be further pertinent to notice here that in "New India Assurance Company Limited v. Anita", order dated 6th January, 2010 in SLP (Civil) No.35537/2009, Hon"ble the Apex Court had held as under:

" By virtue of Section 169(2), the Tribunal is clothed with the powers of Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses and compelling the discovery and production of documents and material objects but there is nothing in the Act from which it can be inferred that the Tribunal is bound by the technical rules of evidence "

The above said finding of Hon"ble the Supreme Court has been culled out from a judgment rendered by the Delhi High Court in "Mayur Arora v. Amit @ Pange and others" (MAC.APP.609/2009 decided on 12th April, 2010). Justice J.N. Midha of Delhi High Court, who has done pioneering work in the Motor Accident Claims Tribunal, in "Mayur Arora's case (supra) held as under:

"9.16. Somari Devi v. Ragwar Singh in FAO No.884/2003 decided on 22nd May, 2009- This Court has elaborated the scope of Section 165 of the Indian Evidence Act, 1872. The relevant findings of this Court are reproduced hereunder:-

"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

authorise 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 under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted."

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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.

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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 wilfully avoided."

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10. THE "INQUIRY" CONTEMPLATED UNDER SECTION 168 of MOTOR VEHICLES ACT, 1988

10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the

victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record."

7. The claimant seeking compensation is not pursuing adversial litigation. Therefore, onus cast upon him is not that onerous which may be in a civil or a criminal case. The Motor Vehicles Act is a beneficial legislation. The Tribunal has to hold an inquiry and gather information and evidence.

8. In the present case, the Tribunal had not followed the procedure laid in Section 168 of the Motor Vehicles Act, 1988.

9. In the light of the judgment in the case of Bhagat Singh (supra) which has been extensively reproduced above, the present appeal is accepted, the impugned award is set aside, claim petition is remitted back to the Tribunal to hold a meaningful inquiry. The Tribunal on its own or on an application filed by the claimant can call the Investigating Officer of the criminal case registered at Faridabad and gather necessary evidence. The appellant also, if advised, can file an application for additional evidence.

10. Consequently, the award dated 19.1.2005, rendered by the court of Motor Accident Claims Tribunal, Karauli, is set aside. The matter is remitted back to the Tribunal to decide the claim petition afresh within a period of six months. The parties through their counsel are directed to appear before the Tribunal on 15.3.2016.