
(2014) 01 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 657 of 1994

National Insurance Company Limited	Vs	APPELLANT
Mithu Singh and Others		RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 140, 166, 2 (18), 95(1)(b)(i)

Citation : (2016) ACJ 345

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Sandeep Suri, Advocates for the Appellant

Judgement

Ajay Kumar Mittal, J.—National Insurance Company Limited has filed the present appeal assailing the award dated 17.11.1993 passed by the Motor Accident Claims Tribunal, Bathinda (in short "the Tribunal") whereby a compensation of Rs. 1,35,000/- has been awarded to the dependents of deceased Major Singh.

2. The facts relevant for adjudication of the present appeal as narrated therein are that deceased-Major Singh was running a workshop under the name of Dashmesh Body Builder at Sardulgarh. On 7.10.1991 at 7.00 PM, Lal Singh-respondent No. 5 took his bus bearing registration No. PAB-2355 belonging to Dhillon Roadways (Regd), Mansa-respondent for repair. When the deceased was approaching the bus to enquire about the defect, the diesel tank of the bus exploded at once and the bus caught fire. The deceased sustained burn injuries and later on died in the Civil Hospital, Mansa. According to the claimants, the police colluded with the owner and driver of the vehicle in question and did not register a case. The deceased was a mechanic and used to earn Rs. 3000/- per month. Accordingly, the claimants filed a petition for claiming compensation of Rs. 5 lacs. Two separate replies were filed, one by the owner and driver of the vehicle and the other by the Insurance Company by controverting the averments made in the claim petition and prayer was made for dismissal of the claim petition. However, the vehicle being insured with the Insurance Company was

admitted. From the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether the death of Major Singh (wrongly written as Mithu) was due to rash and negligent act of driving of respondent No. 2? OPP

2. If issue No. 1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPP

3. Whether the claim petition is legally maintainable? OPP

4. Whether Major Singh (wrongly written as Mithu) died due to his own negligence and carelessness? OPR

5. Whether respondent No. 2 has no valid driving licence at the time of the alleged accident? OPR

6. Whether the owner of the vehicle had no valid registration certificate etc.? OPR

7. Whether the claim petition has been filed in collusion with respondents No. 1 and 2? OPR

8. Whether the claim petition is bad for mis-joinder of parties? OPR

9. Relief."

3. The Tribunal took issues No. 1, 3 and 4 being inter- connected and on appreciation of the evidence led by the parties, decided in favour of the claimants holding that Major Singh did not die due to his own negligence and carelessness. Issue No. 2 was decided in favour of the claimants holding them entitled to a compensation of Rs. 1,35,000/-. Issues No. 5 to 9 were also decided against the respondents i.e., owner, driver and Insurance Company. Accordingly, the claim petition was allowed vide award dated 17.11.1993 and a total compensation of Rs. 1,35,000/- along with interest at the rate of Rs. 12% per annum from the date of application till its realization was awarded to the claimants. Feeling aggrieved, the Insurance Company has approached this Court by way of instant appeal.

4. Learned counsel for the appellant submitted that the bus was in stationary position and was parked for repair of axle. Deceased Major Singh-Mechanic while repairing the same had negligently touched the welding machine to the diesel tank whereby the bus exploded. As the bus was stationary and in such circumstances, the occurrence cannot be said to have arisen out of the use of motor vehicle and no petition under Section 140 read with Section 166 of the Motor Vehicles Act, 1988 (in short "the Act") was maintainable. It was also argued that deceased Major Singh was himself negligent and, therefore, he being a tort-feasor, the claim petition was liable to be dismissed. Liability was sought to be avoided by relying upon Panchayatnama, Ex.R1.

5. Besides supporting the award passed by the Tribunal regarding the liability of the Insurance Company, learned counsel for respondents No. 4 and 5 relied upon

the judgment of the Apex Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, to submit that the Insurance Company was liable for the amount of compensation awarded by the Tribunal as the word "use" includes the period when the vehicle was in stationary position due to breakdown, mechanical defect or accident. Regarding the second argument, it was submitted that the Tribunal had rejected the similar contention and there was no material to substantiate that Major Singh deceased was himself negligent.

6. After hearing learned counsel for the parties, I do not find any merit in the appeal.

7. In order to effectively adjudicate the appeal, the following points are required to be answered:-

(i) Whether, in the facts and circumstances, the Insurance Company could be held liable to discharge the liability of respondents No. 4 and 5 when the vehicle was in a stationary position and was parked for removing mechanical defect therein?

(ii) Whether, in the facts and circumstances, the accident had occurred due to negligence and carelessness of deceased Major Singh?

8. Examining the first issue, the Hon"ble Apex Court in Shivaji Dayanu Patil's case (supra) in para 26 after noticing various provisions of the Act had observed as under:-

"These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court had held that the expression "use of a motor vehicle" in section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."

9. In that case, the petrol tanker after the collision with the truck was lying on the side of the road when explosion and fire took place resulting in death. The Hon"ble Supreme Court held that the word "use", in the context of motor

vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown, mechanical defect or accident.

10. The Kerala High Court in *Sharlet Augustine and Others Vs. K.K. Raveendran and Others*, following the aforesaid decision of the Hon'ble Apex Court in para 13 had recorded as under:-

"13. The Supreme Court had occasion recently to consider the scope of the expressions "use of vehicle" and "arising out of the use of vehicle" in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, . In that case, the interpretation of Section 92A of Motor Vehicles Act came up for consideration. There was a collision between a petrol tanker and a truck, as a result of which, the petrol tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. The petrol contained in it leaked out and got collected nearby. An explosion took place in the said petrol tanker resulting in fire. A number of persons who had assembled near the petrol tanker sustained burn injuries and a few of them succumbed to the said injuries. The respondent before the Supreme Court in that case is the mother of one of those died, as a result of such injuries. She filed a claim petition under Section 110 of Motor Vehicles Act. She also made a claim for compensation under Section 92A. Petitioners before the Supreme Court raised an objection with regard to the jurisdiction of the Claims Tribunal to entertain such petitions on the ground that explosion and fire resulting in injuries to the deceased could not be said to be an accident "arising out of the use of a motor vehicle". The Claims Tribunal upheld their contention holding that the explosion and fire took place about 4 hours after the incident and had no connection whatsoever with the accident. On appeal to the High Court, a learned single Judge held that the fact that at the material time the tanker was not being driven on the Highway, but was lying turtle on its side would make no difference and that vehicle Lying on the side of the Highway would be covered by the expression "use" in Section 92A of the Act and that compensation would be payable under no fault liability of Section 92A. Petitioners filed letters patent appeal, but that was dismissed by a Division Bench of the High Court confirming the findings of the learned single Judge. These findings were challenged before the Supreme Court. The Supreme Court rejected the contentions and observed as follows *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, :--

"At the time when the petrol tanker collided with the truck on the national highway, it was being used for the purpose of transporting petrol. It cannot, therefore, be disputed that when the said collision took place, it was a motor vehicle as the said expression was defined in Section 2 (18) of the Act. Did it cease to be motor vehicle after the collision with the truck on account of its lying turtle on its side at some distance from the road as a result of the said collision? In our view, this question must be answered in the negative."

The Supreme Court then proceeded to consider the further question whether the explosion and fire which caused injuries to the deceased son of the respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle viz. the petrol tanker and observed as follows (para 35 of AIR) :--

".....as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Section 95(1)(b)(i) and (ii) and 95(2) (b)(ii) of the Act. In Section 92A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."

The Supreme Court ultimately held that the explosion and fire resulting in the injuries which led to the death was due to an accident arising out of the use of the motor vehicle."

11. In view of the above, the first contention raised by the learned counsel for the appellant has no merit and is, thus, rejected.

12. Adverting to the second contention, it may be noticed that the Tribunal on appreciation of evidence produced on record had concluded that the accident whereby explosion had taken place due to the sparks of the welding touching the diesel tank, was not as a result of negligence and carelessness of deceased Major Singh. It would be advantageous to refer to the finding of the Tribunal under issue No. 4 recorded in paras 12 to 16 of the award which is to the following effect:-

"12. The second limb of the arguments on behalf of the respondents is that the accident has resulted due to the negligence of the deceased mechanic Major Singh and as such, neither the owner nor driver nor the Insurance Company is liable. In support of this first of all reference has been made to Exh. R3 carbon copy of statement of deceased Major Singh which ASI Kaur Singh claims to have recorded on 7.10.1991 in the Civil Hospital, Sardulgarh at 9.20 P.M. In this statement Major Singh said that while he was welding the axle, the welding rod touched the diesel tank which exploded creating fire and that none else was to blame and he wanted no action against any one. The genuineness of this statement is not free from doubt. It is in evidence of the witnesses that Major Singh had become unconscious immediately on receipt of the burn injuries on the spot. There is no evidence, if at the time of recording the statement the deceased was in a fit condition to tell the story. No opinion of the doctor has

been placed on the file. ASI Sher Singh did state that he had obtained the opinion of the doctor, but the same is not before me and as such the ASI's claim is unsupported. Definitely, before recording the statement of Major Singh injured it was essential for ASI Kaur to have obtained the opinion of the doctor about fitness of the former to make a statement. According to father of the deceased the later used to sign, but the statement Ex.R3 bears the thumb impression. Still further in the endorsement appended by the ASI below the statement of Major Singh, stated that from the doctor he obtained the opinion, if Mithu Singh was fit to make the statement. At a number of other places he wrote the name of Mithu Singh and then corrected as Major Singh, bus number has also been wrongly stated in the statement Exh. R3 and these appear to have been corrected later on. Any how, taking these mistakes as mistake of pen, or absent mindedness, without there being any evidence regarding Major Singh having fit to make the statement, Exh. R3 cannot be taken as admission of Major Singh regarding the occurrence absolving the respondents of their liability. Falsity of the statement is further apparent from the fact that on the basis of this statement ASI Kaur Singh claimed to have recorded a Roznamcha report on the same day. The copy of the Roznamcha report is Exh.R4 which is of 8.10.1991, recorded at 6.35 A.M. which means that it was not recorded on the day of occurrence and rather brought into being on the next day i.e. 8.10.1991.

13. Panchayatnama Exh.R1 has also been relied upon by the respondents for refuting the claim asserting that Mithu Singh has in this Panchayatnama admitted the fault of his son and not of the respondent-driver. This document has been proved by the statement of R.W.2 Harnek Singh of Sardulgarh and ASI Kaur Singh. Mithu Singh has, however, denied the execution of the same. Even if it is taken to have been written at the Police Station, as is claimed by the respondents, it will not have much evidentiary value simply for the reason that Mithu Singh himself was not present at the time of occurrence. Secondly it is not signed either by the driver of the vehicle, respondent No. 2 or its owner respondent No. 1. What was the necessity of this Panchayatnama is a matter of guessing. Rather it seems to have been manufactured with a view to help the respondents. Any-how, in a similar circumstances in 1987(1) P.L.R. 92 Sant Kaur and others Vs. Major Singh & others, where a widow, who was not present at the time of accident, stated before the police that accident had occurred by chance and no one was to be blamed for it, the statement was held to be a hear say not entitled by itself to warrant a finding to this effect. Similarly, when Mithu Singh was not present his signing on a writing that the occurrence had taken per chance and none was at fault is hardly of any help to the respondents for avoiding their liability, only on the basis of this document.

14. Coming to the actual occurrence, learned counsel for the respondents argued that in the application for the claimants have placed that the diesel tank exploded when the deceased was approaching the bus to enquire about the defect whereas according to A.W.1 Angrej Singh and A.W.2 Gurmel Singh, Major Singh deceased went underneath the bus when the driver started the engine by

igniting it and the bus caught fire. There appears to be nothing contradictory into the stands and the plea of the claimants that when Major Singh was inspecting the vehicle to detect the defect, the driver ignited the engine and suddenly the diesel tank exploded.

15. The assertion of the driver respondent no. 2 Lal Singh is that the axle of the vehicle was to be welded and when Major Singh was so doing the welding and touched the diesel tank which exploded and according to him, it was the fault of the deceased mechanic Major Singh. Thus, we have two versions regarding the occurrence. Even if the version taken by the respondents is accepted in that case too the respondent driver must have been careful in emptying the diesel from the diesel tank before getting the axle, fixed near the diesel engine, tank, welded. His claim that he had cautioned the mechanic is an after thought.

16. Except the statement of the driver-respondent that the vehicle needed welding and it was taken for this purpose, there is no evidence at all to support this claim. As stated earlier even this claim would make the respondent negligent as it was his duty to ensure safety to the welding work before getting the same from the Mechanic. A.W.1 Angrej Singh and A.W.2 Gurmel Singh have corroborated the version of the claimants and there is nothing much to disbelieve them. Merely because A.W.2 Gurmel Singh is relation of the deceased will not result in disbelieving his deposition. It would be interesting that no suggestion has been put to A.W.2 that the occurrence took place when the deceased by his negligence touched the welding rod with the diesel tank. In such circumstances the deposition of the two witnesses about the manner of occurrence has to be believed. As a result, therefore, I conclude that the occurrence has resulted due to the negligence on the part of the respondent driver even if his story is accepted, because it was for him to have emptied the diesel tank or otherwise, he should have specifically told the mechanic that the diesel tank was full of diesel and could catch fire in case of welding was done near it. I am further of the opinion that there is no reliable evidence on the file to give a finding that Major Singh died due to his own negligence and carelessness. Finding on all these issues are, therefore, returned in favour of the claimants."

13. The argument with regard to panchayatnama (Ex.R1) was also raised before the Tribunal and it was rejected by it as noticed in the aforesaid findings.

14. In view of the above, there is no merit in the present appeal and the same is hereby dismissed. No costs.