(2017) 11 RAJ CK 0035

In the Rajasthan High Court

Case No : 2533 of 2017

National Insurance Company Ltd., APPELLANT

Vs

Kalu Ram S/o Mangilal RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 164 - Recording of confessions and statements
Motor Vehicles Act, 1988, Section 134(b), Section 134(b) -

Citation : (2017) 11 RAJ CK 0035

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : Jagdish Vyas, Ravi Panwar

Final Decision : Dismissed

Judgement

1. These appeals are directed against the judgment and awards

dated 5/6/2017 passed by the Motor Accident Claims Tribunal,

Jaitaran, District, Pali (''the Tribunal''), whereby, the Tribunal has awarded a sum of Rs. 2,60,000/- to claimants Bagda Ram &

others, Rs.6,40,928/- to claimants Budha Ram & another and

Rs.6,40,928/- to claimants Kalu Ram and another along with

interest @ 9% p.a. from the date of applications i.e. 14/3/2016.

2. The applications for compensation were filed by claimants,

sons of deceased Mangilal and parents of deceased Shyam Lal and

Naresh inter alia with the averments that on 17/4/2015 at about

10.30 p.m. all the three persons, Mangilal, Shaymlal and Naresh, were riding on a Motor Cycle when the offending Maruti Van No. RJ-01-UA-1027, being driven by Badri Banjara rashly and negligently, collided with the Motor Cycle, resulting in grievous injuries to Mangilal, Shyamlal and Naresh on account of which all three of them died on the spot. Averments were made pertaining to the basis for claiming various amounts of compensation for the death of Mangilal, Shyamlal and Naresh.

3. Replies to the applications were filed by driver and owner of the Maruti Van with the contentions that the driver of Motor Cycle, Shyamlal, contributed to the accident and the accident happened on account of Motor Cycle slipping and no accident occurred from the vehicle, the vehicle has been wrongly implicated, the vehicle was insured with the Insurance Company and it was prayed that the applications be rejected.

4. The appellant Insurance Company filed its response with the contention that the accident did not occur from the insured Maruti Van, the vehicle has been falsely implicated, the police has not investigated properly, accident occurred on account of negligence of the driver of Motor Cycle, the driver of Maruti Van was not in possession of requisite driving licence, the driver of Motor Cycle was not wearing helmet and was not in possession of driving licence, he had contributed to the accident. The vehicle being insured with the Insurance Company was accepted, the basis for claiming compensation was denied and it was alleged that excessive compensation has been claimed and it was prayed that the applications be dismissed.

5. The Tribunal framed five issues. On behalf of the claimants A.W.1 - Madan Lal, A.W.2 - Ram Prakash, A.W.3 - Kalu Ram, A.W.4 - Budha Ram were examined, out of them A.W.2 - Ram Prakash was claimed to be an eye witness to the accident, by way

of documentary evidence 20 documents were exhibited, on behalf of the non-claimants N.A.W.1 - Vinod Kumar and N.A.W.2 - Manjul Tanwar were examined and 5 documents were exhibited.

6. After hearing the parties, the Tribunal observed that the oral statements pertaining to the accident were recorded on behalf of the claimants and non-claimants, claimants have referred to the documents and qua the documentary evidence no evidence was produced by the respondents and came to the conclusion that the accident occurred on account of rash and negligent driving by the driver of Maruti Van. While considering the issue no.3 pertaining to the defence raised by the appellant Insurance Company, the Tribunal observed that the allegations made were based on imagination and, therefore, same cannot be countenanced and rejected the defense raised by the appellant Insurance Company. Whereafter, the issues pertaining to quantum of compensation were determined and compensation as noticed hereinbefore was awarded.

7. It was vehemently submitted by learned counsel for the appellant that the present is a case wherein from the material available on record, it is apparent that the accident in question did not occur from the insured vehicle and the insured vehicle has been falsely implicated only with a view to ensure that compensation is recovered from the Insurance Company and, therefore, the award impugned deserves to be quashed and set aside.

8. Learned counsel for the appellant submitted that the Tribunal has dealt with the issue pertaining to the involvement of the vehicle under issues no.1 and 3 in a most cursory and slip shot manner and has totally ignored the documentary evidence placed on record by the appellant, which has resulted in it returning a

perverse finding on the issue pertaining to involvement of vehicle and, therefore, the award impugned deserves to be quashed and set aside.

9. It was submitted that the accident allegedly occurred at 10.30 p.m. on 17/4/2015; in the police ''Rojnaamcha'' (daily diary) (Ex.NA/4) of the same date at 10.50 p.m. information of accident has been recorded and in Ex. NA/4 another entry at 2.00 a.m. has been recorded indicating about the accident having occurred from an unknown truck; the FIR was lodged on 18/4/2015 at 7.30 a.m. by Madan Lal s/o deceased Mangi Lal against an unknown vehicle; on 31/5/2015, the police gave F.R. indicating "VERNACULAR MATTER OMITTED" i.e. for want of information about the vehicle and the accused; on a protest petition filed against the acceptance of final report, by order dated 8/10/2015 further investigation was ordered and it is at the stage of further investigation that the complainants indicated the involvement of the insured Maruti Van, based on which the police filed challan against the owner and alleged driver of the insured Maruti Van on 27/12/2015.

10. It was submitted that from the sequence of events coupled with the statements of four witnesses, the false implication was apparent; a bare look at the statements of three claimants A.W.1 - Madan Lal, A.W.3 - Kalu Ram and A.W.4 - Budha Ram reveals that it is the consistent claim made by them that involvement of the insured vehicle was informed to all three of them after some days by the alleged eye witness Ram Prakash, A.W.2; in his cross examination A.W.1. - Madan Lal indicated that after 20 days of the accident Ram Prakash informed him about the involvement of insured vehicle RJ-01-UA-1027; similarly, Budha Ram (A.W.4) also indicated in his cross examination that Ram Prakash after 15-20

days of the accident informed him about the numbers of insured vehicle. Ram Prakash in his cross examination also indicated that after 15-20 days of the accident, he informed the numbers of the insured Maruti Van to Madan Lal. It is submitted that once all the three claimants became aware of the involvement of Maruti Van within 15-20 days of the accident and the negative F.R. was given by the police on 31/5/2015, no reason is forthcoming as to why the involvement of the insured vehicle was not brought to the notice of police till 31/5/2015, when admittedly the claimants allegedly became aware of the involvement of the insured vehicle in the beginning of May, 2015 and the said number of vehicle was disclosed allegedly during the course of further investigation after the same was ordered by the court. It was submitted that the conduct of the claimants is wholly unnatural and coupled with the fact that in the police ''Rojnaamcha'' (Ex.NA-4) involvement of an unknown truck was indicated, false implication of the insured vehicle is apparent.

11. Further submissions were made that A.W.2 - Ram Prakash is totally made up eye witness, whose statement has been believed by the Tribunal, which on its face is a false statement. It was submitted that the said witness claims himself to be an eye witness of the accident and having noted the numbers of the insured vehicle after the accident, he also claims to have informed on telephone within 20 minutes of the accident to the families of all three persons injured in the accident as they were customers of the Petrol Pump where he was working and he had their telephone numbers. It was submitted that the said story falls to the ground on account of admission in the cross examination of A.W.2 - Ram Prakash, the alleged eye witness, that he started knowing the deceased Mangi Lal after the accident, which statement totally

belies the fact of his being an eye witness, his having telephoned the families of the deceased and having given the numbers of the insured vehicle and on that count the finding of the Tribunal deserves to be quashed and set aside.

12. Further submissions were made that the postmortem report of all the three deceased persons, which have come on record shows severe wounds and multiple fractures qua all the three deceased, which nature of wounds and fractures cannot occur if a head-on collision takes place between a small vehicle such as Maruti Van and a Motor Cycle carrying three passengers, which is also an indication regarding involvement of a bigger vehicle, which aspect was indicated by the police in its ''Rojnaamcha'' i.e. accident by an unknown ''truck''. It was submitted that the finding recorded by the Tribunal in ignorance of such evidence deserves to be quashed and set aside and consequently the awards deserve to be set aside.

13. Learned counsel appearing for the respondents-claimants vehemently opposed the submissions made by the learned counsel for the appellant. It was submitted that the Tribunal has recorded the finding based on oral and documentary evidence which has come on record, which finding does not call for any interference.

14. Submissions were made that the appellant Insurance Company by pointing out minor aspects of the matter is seeking to disown its liability based on alleged non-involvement of the insured vehicle, which submissions have no substance. It was submitted that the involvement of the vehicle has been admitted by the driver of the insured vehicle in response to a notice under Section 134(b) of the Motor Vehicles Act, 1988, wherein, he admitted driving the vehicle and accident having occurred.

15. Further submissions were made that in the statement

recorded under Section 164 Cr.P.C., Ram Prakash clearly indicated the involvement of insured vehicle and, therefore, there was no reason for the Tribunal to disbelieve the said material which has come on record regarding the involvement of the insured vehicle and, therefore, the findings recorded by the Tribunal do not call for any interference.

16. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

17. In the present appeals, the appellant Insurance Company has seriously challenged the involvement of the insured vehicle and from the material available on record it is apparent that the said challenge was laid from the very beginning i.e. in response to the applications for compensation and during the course of evidence, whereby, the claimants'' witnesses were cross examined on the said aspect and documentary evidence was produced as Ex.NA.1 to Ex.NA.5 to substantiate the contention regarding non-involvement of the insured vehicle.

18. The claim of claimants in all the three applications was consistent that the three deceased persons were riding on a Motor Cycle when the accident occurred at 10.30 p.m. on 17/4/2015 and on account of accident all the three died on the accident spot. While Madan Lal claims that he was informed on telephone by Ram Prakash (A.W.2), Kalu Ram (A.W.3) claims that he received a call from Madan Lal and Budha Ram (A.W.4) stated that someone telephoned him, but it is their consistent claim that all three of them reached the spot within 20 minutes of the accident and it is most relevant to consider that Ram Prakash (A.W.2), who claims to be an eye witness and regarding whom a claim is made that he called Madan Lal informing him about the accident, in his statement clearly indicated that he started knowing Mangi Lal i.e.

father of Madan Lal after the accident. The said witness Ram Prakash in his cross examination claimed that he knew the family members of all the three deceased occupants of the Motor Cycle as they used to visit the Petrol Pump for fuel where he was working and he had their telephone numbers in his mobile and, therefore, he called them. Statement of Ram Prakash having called Madan Lal in light of his statement that he started knowing the deceased after the accident clearly makes the statement of Ram Prakash unreliable. Further, the conduct of Ram Prakash, wherein, he claims that he knew the families of all the three deceased persons, left the place of accident after sometime and despite knowing the number of offending vehicle did not meet and/or inform the family members regarding the involvement of the vehicle for about 15-20 days, in the circumstances of the case is quite unusual, wherein, if the deceased were known to him to the extent that he had telephone numbers in his mobile of their family members, not meeting the family members and not informing the numbers of the vehicle in a typical village setting, in view of the claim made, cannot be believed.

19. Further, the fact that if the particulars of the offending vehicle were handed over to the families of the claimants inasmuch as all the three witnesses A.W.1, A.W.3 & A.W.4 have claimed in their examination-in-chief that they received the information about the involvement of the particular vehicle within 15-20 days of the accident i.e. around first week of May, 2015 (as the accident took place on 17/4/2015) and before the police submitted negative F.R. on 31/5/2015 and despite all the three having known about the involvement of the insured vehicle chose not to inform the police regarding the involvement of the insured Maruti Van, is a conduct which is absolutely unnatural and

unbelievable. No explanation whatsoever has been given by the claimants pertaining to the said aspect of the matter as to what prevented them from informing the police about involvement of insured vehicle as soon as they became aware of the involvement of the vehicle.

20. In fact the claimants did not even indicate anywhere in the pleadings or statements that the police initially gave negative F.R. on 31/5/2015 and on protest petition having being filed, on re-investigation and on the claimants informing about the involvement of insured vehicle that the challan was filed. Suppression of the said facts, which are quite relevant in the circumstances of the case, cannot be ignored.

21. The Tribunal in its judgment leave alone considering, did not even indicate that the documents Ex.NA/1 to NA/5 were produced by the respondent contesting the involvement of the vehicle and after mentioning the documents produced by the claimants has simply indicated that no contrary evidence has been produced by the Insurance Company and has not at all considered the consistent plea raised by the appellant Insurance Company, which clearly renders the finding recorded by the Tribunal perverse.

22. The first indication pertaining to nature of/manner of accident has been noticed in the police ''Rojnaamcha'' dated 18/4/2015 at 2.00 a.m., wherein, the involvement of an unknown truck was indicated along with the fact that three persons had died on the spot, whose bodies were transported to the Government Hospital, Neemaj and that ''Naka Bandi'' for apprehending the truck was made along with checking at the highway hotels, however, the same could not be apprehended.

23. The FIR was lodged against an unknown vehicle by Madan Lal, AW.1 on 18/4/2015 itself. The postmortem report of all the

three deceased persons indicate multiple wounds, multiple bruises and multiple fractures on the entire body. The status of body of Mangi Lal as indicated in the postmortem report, who was not even the driver, which is almost similar in all cases pertaining to muscles, bones and joints indicates the extent of injuries suffered by three deceased persons, who were riding the Motor Cycle and met with the accident:

"E-MUSCLES, BONES & JOINTS 1. Injury - Sclap is lacerated and 2x2 cm Hole is present in frontal bone - 7x5 cm lacerated wound is present on Right knee - Bone is coming out of large lacerated wound of Right leg - Swellings are present on mid thigh & mid arm on Right hand 2. Disease or Deformity - skull is grossly disfigured due to multiple fracture and lacerated wound of scalp and turned towards left side - Right leg is rotated medially due to fracture of leg bones 3. Fractures 1. multiple fractures of skull bones (2) fracture of Rt. Humerus (3) fracture of Rt radius & ulna (4) multiple Rt sided Ribs fractures (5) fracture of Rt. Thigh (6) fracture of Rt Tibia & Fibula 4. Dislocation Multiple dislocations present in multiple joints all over body."

24. The nature of wounds, injuries and fractures which have been suffered by the three occupants of Motor Cycle coupled with the claim that accident occurred from a Maruti Van, which it is common knowledge and regarding which judicial notice can be taken is a small vehicle with very small tyres and low ground clearance, is factually not possible and the nature of injuries coupled with the indication in the police ''Rojnaamcha'' regarding involvement of an unknown ''truck'' clearly indicates towards the accident by a big vehicle resulting in such massive/severe injuries to the deceased persons resulting in multiple wounds/fractures all over the body. Further, if such nature of injuries to three persons were caused by a Maruti Van, the said vehicle apparently could not be then in a position to flee away from the accident scene. The Tribunal, failed to take into consideration the said aspect also and has essentially proceeded in an absolutely slip shot and cursory manner merely based on the fact that the police had filed challan

against the insured vehicle.

25. So far as the admission made by the driver in response to notice under Section 134(b) of the Act vide Ex.11, is concerned, the same reads as under:

"VERNACULAR MATTER OMITTED"

26. The above admission in reply to notice (though the same is in incorrect language) further fortifies the allegations made by the appellant Insurance Company regarding false implication of the vehicle as the response made to the notice indicating that ''he himself has committed the accident'' implicating himself is wholly unnatural and further fortifies the allegation about collusion of the owner and driver of the insured vehicle for the purpose of recovering amount of compensation from the Insurance Company as the accident occurred from some unknown vehicle, which could not be traced by the police.

27. The above aspect is further confounded by the fact that despite filing reply to the applications both the driver and the owner chose not to appear in the witness box.

28. In view of the above discussion, the finding of the Tribunal on issue nos. 1 and 3 cannot be sustained. The oral and documentary evidence available on record does not in any manner indicate the involvement of insured vehicle in the accident and the entire sequence of events as noticed hereinbefore apparently indicate false implication of insured vehicle in question.

29. As such, it is held that the insured vehicle was not involved in the accident. As the insured vehicle has been held to be not involved in the accident, consequently in the absence of the actual offending vehicle, its owner, driver and the Insurance Company before the Tribunal, the award passed by the Tribunal cannot be sustained.

30. Consequently, the appeals are allowed, the impugned judgment and awards dated 5/6/2017 passed by the Tribunal in MAC Case No. 40/16, 41/16 and 42/16 are quashed and set aside. The claim petitions filed by the claimants are dismissed.

31. No order as to costs.

