
(2019) 08 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1455 Of 2015

New India Assurance Co. Ltd.

APPELLANT

Vs

Dhapu Bai And Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 133

Citation : (2019) 08 RAJ CK 0095

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Sunil A. Vyas, A. K. Babel

Final Decision : Dismissed

Judgement

The present appeal has been filed by the appellant-insurance company against the award dated 02.05.2015 passed by learned Motor Accident Claims Tribunal, Chittorgarh in Motor Accident Claim Application Case No. 326/2008.

The respondent-claimants preferred a claim petition seeking grant of compensation on account of death of Ratanlal who died in a accident which took place on 28.02.2008, on various grounds before the learned Motor Accident Claims Tribunal, Chittorgarh. The reply was filed on behalf of the appellant-insurance company as well as the respondents/non-claimants (Driver & Owner of the offending Car) denying the allegations in the claim petition. Thereafter, on completion of the pleadings, the learned Tribunal framed the issues.

After hearing the counsel for the parties, the learned Tribunal decided the claim petition of the respondents/claimants and awarded a sum of Rs. 5,91,500/- in favour of the respondents/claimants and directed the appellant as well as respondents/non-claimants to pay an interest @ 9% per annum on the amount awarded from the date of filing of the claim petition.

With the consent of the parties, the matter is being decided finally.

Heard.

In the present case, the factum of accident with insured vehicle has been disputed.

Learned counsel for the appellant vehemently argued that the learned Tribunal fell into error while considering the fact that the accident took place by the insured vehicle RJ-09C-5412. He further submits that immediately after the accident, the FIR was registered in which the number of vehicle was stated to be RJ-09C-5254. He further submits that in order to get the compensation, the number of the offending vehicle has been changed. He submits that the original number of vehicle which was initially involved in the accident was changed when the charge-sheet was filed by the police, after the investigation.

Learned counsel for the appellant while taking this Court to the evidence recorded by the learned Tribunal particularly the cross-examination of AW-4 (Gajraj Singh) who was the Investigating Officer of the Criminal Case, has submitted that the requisite information with respect to the Indica Car No. RJ-09C-5412 was not specifically obtained by him during the course of investigation from the RTO. He further submits that when the FIR was lodged by one Jamil Khan who stated the number of the offending vehicle being RJ-09C-5254 has not been produced in the witness box before the Tribunal and, therefore, there is no reason to disbelieve the number of the vehicle stated to be given by Jamil Khan in the First Information Report. He further submits that in the cross-examination of AW-3 Yashwant Singh, he has also stated that Jamil has submitted the First Information Report in his presence and the number of the car was also stated by him of the vehicle, which was involved in the accident.

On the strength of these arguments, the learned counsel for the appellant submits that just to get compensation from the Insurance Company the present vehicle has been involved which is insured by the appellant.

Per contra, the learned counsel for the respondents submits that the Tribunal has correctly evaluated the testimony of eye-witness in the shape of AW-3 Yashwant Singh who has categorically stated that while he was driving the motor-cycle, he was following Ratanlal just at a distance about 20 feet and he saw the accident. After the accident, he took Ratanlal to the hospital in the same Indica Car (RJ-09C-5412) which colided with the motor-cycle driven by Ratanlal. The Investigating Officer of the Criminal Case (AW-4 Gajraj Singh) has also deposed before the learned Tribunal that his investigating also revealed the involvement of the Indica Car No. RJ-09C-5412 in the present case. The counsel for the respondents further submits that the Tribunal after proper appreciation of the evidence on record has correctly come to the conclusion that the vehicle involved in the present case was Indica Car RJ-09C-5412.

I have considered the submissions made at the Bar and have gone through the award passed by the learned Tribunal as well as relevant records of the case.

The sequence of events which have been projected in the present case show that Ratanlal who is the deceased in the present case was driving the motor-cycle and he was being followed by AW-3 Yaswant Singh on the motor-cycle on the date of accident i.e. 28.02.2008. Immediately, after the accident, AW-3 Yaswant Singh took the deceased Ratanlal to the hospital in the Indica Car RJ-09C-5412 which was involved in the accident. As per the evidence of eye-witness in clear and unambiguous terms, the involvement of Indica Car RJ-09C-5412 in the accident cannot be disbelieved. Further, the investigation in the criminal case also reveals the fact that on notice being given to the owner of the vehicle Ramchhabile under Section 133 of the M.V. Act, he disclosed the fact that on 28.02.2008, the subject vehicle was being driven by Narayan Lal. The disclosure of the name of the driver in the statement of the AW-3 Yashwant Singh also corroborates the fact that on 28.02.2008, the offending vehicle was being driven by Narayan Lal. The learned Tribunal has correctly appreciated the evidence on record and rightly come to the conclusion that the vehicle involved in the present case was Indica Car No. RJ-09C-5412. The relevant portion of order of learned Tribunal which is reproduced as under is, therefore, upheld.

""मेरे द्वारा उक्त बिन्दु पर उभय पक्षों की बहस पर मनन किया गया। यह उल्लेखनीय है कि हस्तगत प्रकरण में एड1 धापूबाई, एड2 सत्यनारायण, एड3 यशवन्तसिंह व एड4 गजराजसिंह एसआई की साक्ष्य लेखबद्ध कराई गई है। जिसमें से धापूबाई व सत्यनारायण घटना के चष्मदर्शी साक्षी नहीं हैं। हस्तगत प्रकरण में अप्रार्थीगण की तरफ से कोई साक्ष्य लेखबद्ध नहीं कराई गई है। एड3 यशवन्तसिंह ने अपने सषपथ कथनों में इस आषय के कथन किये हैं कि दिनांक 28.02.08 को मैं मोटरसाईकिल लेकर दुर्ग से चित्तौडगढ़ शहर की तरफ आ रहा था तथा मेरे आगे रतनलाल मोटरसाईकिल लेकर उतर रहा था पीछे से वाहन इण्डिका नम्बर आरजे 09 सी 5412 को उसका चालक नारायणलाल तेजगति, गफलत व लापरवाहीपूर्वक चलाते हुए ऑवरटेक करते हुए रतनलाल की मोटरसाईकिल के टक्कर मार दी जिससे रतनलाल के शरीर में कई गंभीर व सांघातिक चोटें आईं, उपरोक्त साक्षी के प्रतिपरीक्षण में ऐसा कोई कथन नहीं आया है जिससे उसके कथनों की विष्वसनीयता खण्डित हो। यह उल्लेखनीय है कि अप्रार्थीगण की तरफ से उपरोक्त साक्षी के खण्डन में कोई साक्ष्य प्रस्तुत नहीं की गई है। जहां तक प्रथम सूचना में कार का नम्बर आरजे 09 सी 5412 के स्थान पर आरजे 09 सी 5254 अंकित होने का प्रश्न है, यह उल्लेखनीय है कि प्रथम सूचना व क्लेम पीटिशन दोनों में यह वर्णित है कि दुर्घटना इण्डिका कार द्वारा कारित की गई थी।

यदि प्रथम सूचना में कार की जगह जीप द्वारा दुर्घटना कारित करने का उल्लेख होता व क्लेम पीटिशन में कार द्वारा दुर्घटना कारित का उल्लेख होता तो ऐसी स्थिति में ऐसा विरोधाभास महत्वपूर्ण व सुसंगत होता। दुर्घटना के वक्त दुर्घटना कारित करने वाले वाहन का नम्बर गलत अंकित हो जाना कोई ऐसी परिस्थिति नहीं है कि मात्र इस आधार पर प्रार्थीगण के कथनों को अविष्वसनीय मान लिया जावे। दुर्घटना कारित होने के पश्चात् वो व्यक्ति जो पीडित को अस्पताल ले जाते हैं उनकी प्राथमिकता ऐसे व्यक्ति का ईलाज करवाने की होती है ऐसी स्थिति में कई बार जल्द बाजी में दुर्घटना कारित करने वाले वाहन का नम्बर गलत भी उल्लेखित हो जाता है। यह उल्लेखनीय है कि हस्तगत प्रकरण में प्रार्थीगण द्वारा एड1 गजराजसिंह द्वारा उपरोक्त घटना से संबंधित अपराधिक प्रकरण का अन्वेक्षण किया गया है जो साक्ष्य में पेश किया गया है। उपरोक्त गजराजसिंह एड4 ने अपने प्रतिपरीक्षण में यह कथित किया है कि बाबूलाल व यशवन्तसिंह ने कार संख्या 5412 से दुर्घटना होना बताया था। हस्तगत प्रकरण में एड3 यशवन्तसिंह ने अपने सषपथ कथनों में यह स्पष्ट रूप से कथित किया कि दुर्घटना उसके सामने से घटी थी उपरोक्त साक्षी का यह कथन है कि इण्डिका कार नम्बर आरजे 09 सी 5412 के चालक द्वारा मोटरसाईकिल चालक रतनलाल को ऑवरटेक करते हुए रतनलाल की मोटरसाईकिल के टक्कर मारी, अतः ऐसी स्थिति में यह दर्शित होता है कि उपरोक्त साक्षी एड3 यशवन्त सिंह जो कि घटना का चष्मदर्शी साक्षी है व उक्त बाबूलाल के बयानों के आधार पर अन्वेक्षण अधिकारी इस निष्कर्ष पर पहुंचे कि दुर्घटना कार संख्या आरजे 09 सी

5412 के चालक नारायण लाल द्वारा की गई। यह भी उल्लेखनीय है कि अन्वेक्षण अधिकारी एड4 गजराज सिंह के कथनानुसार उसने इण्डिका कार नम्बर आरजे 09 सी 5412 के मालिक रामछबीले को मोटरवाहन अधिनियम की धारा 133 के अन्तर्गत नोटिस दिया था। पत्रावली पर उपलब्ध उपरोक्त नोटिस की प्रति प्रदर्ष 4 पर पृष्ठांकित उपरोक्त कार नम्बर आरजे 09 सी 5412 के स्वामी रामछबीले ने यह कथित किया है कि दिनांक 28.02.08 को उसकी कार का चालक नारायणलाल पुत्र श्याम लाल था। पत्रावली पर उपलब्ध रतनलाल की पोस्टमार्टम रिपोर्ट प्रदर्ष 5 के अवलोकन से दर्षित होता है कि रतनलाल की मृत्यु सिर पर आई चोट के कारण से हुई थी। गवाह यशवन्तसिंह एड3 के कथनों से दर्षित होता है कि अप्रार्थी नारायण लाल ने कार संख्या आरजे 09 सी 5412 चलाते हुए अपने आगे जाते हुए मोटरसाईकिल चालक रतनलाल के टक्कर मारी, यह परिस्थिति दर्षित करती है कि दुर्घटना कार चालक नारायणलाल की लापरवाही के फलस्वरूप घटित हुई। जिसमें रतनलाल की मृत्यु हुई। पत्रावली पर उपलब्ध उपरोक्त कार के पंजिकृत प्रमाण पत्र से यह दर्षित होता है कि उपरोक्त कार आरजे 09 सी 5412 का स्वामी रामछबीले है अतः ऐसी स्थिति में पत्रावली पर उपलब्ध सामग्री से यह प्रमाणित होता है कि दिनांक 28.02.08 को अप्रार्थी नारायण लाल ने इण्डिका कार नम्बर आरजे 09 सी 5412 को उपेक्षापूर्ण व लापरवाही से चलाते हुए अपने आगे जा रहे मोटरसाईकिल चालक रतनलाल के टक्कर मारी जिसके फलस्वरूप रतनलाल की मृत्यु हो गई। अतः ऐसी स्थिति में प्रार्थीगण तनकी संख्या 1 को अपने हक में सिद्ध करने में सफल रहे हैं।"

This Court is also not impressed by the argument that on the date of lodging of the FIR by Jamil, the number of the Indica Car was stated to be RJ-09C-5254 in the First Information Report and if that is so, the appellant could have produced Jamil in the witness box to fortify the fact that because of the Indica Car which was involved in the accident was having No.RJ-09C-5254. Failure to produce Jamil in the witness box by the appellant, cannot be made disadvantageous to the claimants. The claimants have produced evidence on record in the form of eye witness which clearly proves that Ratan Lal died because of collision of the Indica Car bearing No.RJ-09C-5412 which was being driven by Narayan Lal on the date of the accident. The finding of fact arrived at by the learned Tribunal is just and correct.

Taking into consideration the fact that Indica Car No.RJ-09C-5412 was involved in the accident and no other point was argued, the appeal lacks merit and therefore, the same is hereby dismissed.

Stay petition also stands disposed of.