
(2011) 04 AHC CK 0040

In the Allahabad High Court

Case No : First Appeal From Order No. 278 of 1998

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Ranni and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

American Law Institute, 1934 — Section 28

Evidence Act, 1872 — Section 145

Motor Vehicles Act, 1988 — Section 110, 166, 170, 173

Penal Code, 1860 (IPC) — Section 302, 304A, 392

Citation : (2011) 6 ADJ 198 : (2011) 4 TAC 117

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Appellant and learned Counsel for the claimant Respondents. Also perused record.

2. Present appeal u/s 173 of Motor Vehicles Act, 1988, has been preferred against the impugned Award dated 24.7.1998, passed by the Motor Accident Claims Tribunal (IV-Additional District Judge, Sitapur) in Claim Petition No. 142 of 1995. Brief Facts giving rise to the present controversy are discussed hereinafter.

3. On 10.5.1995, at about 2:00 in the afternoon, one Rajendra Prasad on his way at Hargaon, Sitapur Highway, was crushed from backside by a truck bearing Registration No. UP 76/9055. Rajendra Prasad succumbed to injury at spot. A First Information Report was lodged u/s 302 read with Section 392 IPC. However, later on, police submitted charge-sheet u/s 304-A IPC. Rajendra Prasad was aged about 43 years and was agriculturist having also dairy business. According to claimant Respondents the income of the deceased was Rs. 4,000/- per month who left behind him, his widow Smt. Ranni Devi, sons Varun Kumar and Dheeraj and daughters Km. Preeti and Km. Ruchi, mother Smt. Kokila as dependents.

4. A claim petition was filed for payment of compensation u/s 166 of Motor

Vehicles Act, 1988 to the extent of Rs. 13,75,000/-. The Tribunal framed five issues with regard to accident by the truck in question, driving licence, insurance cover and the relief with regard to payment of compensation.

5. The claimant Respondents Smt Ranni Devi PW-1 and Ganga Sagar PW-2 have been examined. The claimant Respondents also filed post-mortem report, copy of charge-sheet and other documents with regard to criminal case. On behalf of the Defendants various documents were filed which include insurance certificate, permit, national permit, chik report of case crime No. 361/1995 under Sections 302/392 IPC. However, Respondents not led any oral evidence.

6. Smt. Ranni Devi stated that deceased has a flour mill and also was agriculturist having income of Rs. 6000-7000 per month. Ganga Sagar real brother of deceased stated that on 10.5.1995, deceased was going from Hargaon to Sitapur on his motorcyle. Along with him, he was also travelling on another motorcyle. Near village Siyanipur, a truck coming from Hargaon, dashed the motorcyle of deceased from backside. In consequence thereof, the accident occurred and Rajendra Prasad succumbed to injuries. It is stated by PW-2 Ganga Sagar that truck driver was driving the truck rashly and negligently.

7. The Tribunal after considering the evidence on record, awarded compensation to the tune of Rs. 2,09,800/- along with interest.

8. While assailing the impugned order, it has been submitted by Sri Anand Mohan learned Counsel for the Appellant that it was not a case of accidental death. Rather, the murder had been committed by the truck driver to commit robbery. Submission of the learned Counsel for the Appellant is that since it is a murder case, with intention to commit robbery, the claimant Respondents are not entitled for any compensation.

9. On the other hand, learned Counsel for the claimant Respondents submits that though First Information Report was lodged u/s 302 read with Section 392 IPC but later on, it was converted to 304-A IPC. It has also been stated that from the statement of PW-2 Ganga Sagar, it is evident that the truck driver was driving the truck rashly and negligently and hit the deceased from backside to the pillion rider. It is submitted by the learned Counsel for the claimant Respondents that the statement of PW-2 Ganga Sagar corroborates the fact that the controversy in question is accidental death and not a murder or robbery as alleged by the learned Counsel for the Appellant.

10. There appears to be no doubt that the originally, the First Information Report was lodged u/s 302 read with Section 392 IPC. However, later on, the police submitted charge-sheet u/s 304-A IPC in the case crime No. 361/1995. It is settled law that contents of FIR, are not a substantive evidence but only a corroborative evidence and may be used during trial. Once, the police submitted charge-sheet u/s 304-A IPC (accidental death), then argument by placing reliance on F.I.R., seems to be not sustainable. The Tribunal has rightly held that F.I.R. is not substantive evidence and when the police submitted charge-sheet u/

s 304-A IPC, then the F.I.R. loses its sanctity with regard to its contents except to use it for the purpose of contradiction u/s 145 of Evidence Act.

11. In case the Appellant or Insurance Company is of the view that it was a case of murder for the purpose of robbery by the truck driver, then burden was on the Appellant to establish from material cogent evidence. Admittedly, no oral evidence was led by the Appellant before the Tribunal to substantiate its case with regard to murder for the purpose of robbery. Virtually, the Appellant has failed to discharge its burden during the course of trial to establish its plea with regard to murder. In absence of any evidence led by the Appellant, no finding may be recorded merely because the F.I.R. was lodged u/s 302 read with Section 392 IPC.

12. Apart from the above, the post-mortem report also shows that the deceased suffered lacerated crushed injuries on his body. It shows that it was the truck driver who was at fault and hit the deceased on the highway near Hargaon. Whether a death is accidental death or a plain murder, is to be gathered from the facts and circumstances of each case. In case dominant purpose of the death is culpable homicide amounting to murder, then it will be murder. But in case it is because of rashness and negligence on the part of driver of the truck or the vehicle causing accident, then it shall amount to accidental death.

13. In a case in *Naresh Giri v. State of M.R.* (2008) 1 SCC 324, Hon^{ble} Supreme Court has interpreted the word, "negligence" and "reckless" and held that what amounts to negligence depends on the facts of each particular case. To reproduce, relevant paras from the case of *Naresh Giri* (supra) as under:

11. "Negligence" says Restatement of the Law of Tort published by the American Law Institute (1934), Vol.1, Section 28, "is conduct which falls below the standard established for the protection of others against unreasonable risk of harm". It is stated in *Law of Torts by Fleming* at p. 124 (Australian Publication, 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In *Director of Public Prosecutions v. Camplin*, (1978) AC 705; (1978) 2 WLR 679; (1978) 2 All ER 168 (HL), it was observed by Lord Diplock that:(All ER p. 171 f-g)

The "reasonable man" was a comparatively late arrival in the law of provocation. As the law of negligence emerged in the first half of the 19th century he became the anthropomorphic embodiment of the standard of care required by the law.

In order to objectify the law's abstractions like "care", "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

12. In *Syad Akbar Vs. State of Karnataka*,

28.... Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord

Atkin in Syad Akbar Vs. State of Karnataka, "simple lack of care such as will constitute civil liability, is not enough"; for liability under the criminal law "a very high degree of negligence is required to be proved... Probably of all the epithets that can be applied "reckless" most nearly covers the case.

13. According to the dictionary meaning "reckless" means "careless", regardless or heedless of the possible harmful consequences of one's acts. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognising the existence of the risk and nevertheless deciding to ignore it In Syad Akbar Vs. State of Karnataka,

... A man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from that act but nevertheless continues in the performance of that act

14. Apart from the above, admittedly, no permission was obtained u/s 170 of Motor Vehicles Act, 1988. hence the appeal seems to be not maintainable in view of law laid down by the Hon'ble Supreme Court in the case in National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors., 2003 (3) TAC 293 (SC). In view of the above, on merit as well as no permission u/s 170, the appeal lacks merit.

15. In Rajpal Singh Vs. The Union of India and Others, a Full Bench of the Punjab and Haryana High Court by majority expressed its opinion as under:

6. Section 110 of the Act and the crucial words quoted above were also the subject of consideration by a Full Bench of the Punjab and Haryana High Court in the case of Rajpal Singh Vs. The Union of India and Others, The majority opinion was delivered by S.P. Goyal, J. Speaking for the majority S.P. Goyal, J. observed thus in paragraph 31 of the judgment:

The answer to the problem, therefore, entirely depends on the interpretation of Section 110 under which the Claims Tribunals are set up and conferred with the jurisdiction to deal with the claims for compensation. According to this provision, the Claims Tribunal is set up to adjudicate upon claim for compensation in respect of the accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. So, the Tribunal has not been conferred with the jurisdiction to deal with the claims of compensation in respect of all kinds of accidents. Instead, its jurisdiction is confined to claims of compensation in respect of those accidents which arise out of the use of motor vehicles. In other words, the use of motor vehicle must be the cause of the accident howsoever slight it may be and unless the accident is the effect caused by the use of the motor vehicle it would not be possible to say that it has arisen out of the use of motor vehicle. The interpretation of similar words came up for consideration before a Five Judges

Bench of the High Court of Australia in *Government Insurance Office of New South Wales v. R.J. Green and Loyd Ptv. Ltd.* The words used in the insurance policy were "injury caused by or arising out of the use of the vehicle". Windeyer, J. while agreeing with the judgment written by Barwick C.J. Observed:

The words, "injury caused by or arising out of the use of the vehicle" postulate a casual relationship between the use of the vehicle and the injury" caused by connotes a "direct" or "proximate" relationship of cause and effect. Arising out of extends this to a result that is less immediate; but it still carries a sense of consequence. It excludes cases of bodily injury in which the use of the vehicle is a merely casual concomitant not considered to be, in a relevant casual sense, a contributing facts.

(emphasis added)

16. In the case in *Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another*, their Lordships of Hon"ble Supreme Court distinguished the simplicitor murder occurred in an incident and the accidental murder. Hon"ble Supreme Court held that if the dominant intention of an act of felony is to kill any particular person, then such killing shall not be an accidental murder but a murder simplicitor. But in case originally murder was not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder and the claimant shall be entitled for compensation.

The Appellant Insurance Company has not led evidence to establish that the driver of the truck was intending to kill the deceased. Burden was on the Appellant to establish by leading evidence but it seems to have not been done.

17. Accordingly, the appeal is dismissed. Let entire compensation alongwith interest be deposited within two months before the Tribunal. The amount deposited in this Court, shall be remitted to Tribunal forthwith. The Tribunal shall release the compensation immediately thereafter say, within a month in terms of Award.

No cost.