
(2012) 07 DEL CK 0562
In the Delhi High Court
Case No : MAC App. 550 of 2011

New India Assurance CO. Ltd.

APPELLANT

Vs

Smt. Sakshi Bhutani and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 140, 166, 168
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2012) 07 DEL CK 0562

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; Amit Kumar Pandey, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Mittal, J.—The Appellant New India Assurance Co. Ltd. impugns a judgment dated 28.03.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 12,75,960/- was awarded in favour of the Respondents No.1 to 3 for the death of Rajesh Bhutani who died in a motor accident which occurred on 31.07.2008. There is twin challenge to the award; it is urged that the Claims Tribunal erred in holding that the accident was caused on account of the rash and negligent driving of vehicle No.HR-47D-3785 by the Fourth Respondent which was a sine qua non for award of compensation in a Petition u/s 166 of the Motor Vehicles Act (the Act) and that the compensation awarded was excessive and exorbitant.

NEGLIGENCE:

2. While dealing with the issue of negligence, the Claims Tribunal held as under:

6. Since the present petition is u/s 166 of M.V. Act, it was the bounden duty of the petitioner to prove that the respondent No.2 was rash and negligent in

driving the vehicle at the time of accident. In order to prove this issue, the Ld. counsel for the petitioner has relied upon the statement of PW1, who is the widow of the deceased and she has deposed that her husband sustained fatal injuries due to road vehicular accident that took place on 31.07.2008 at about 08.00 Hrs near NTPC Mathura Road, near Sagar Restaurant, Mohan Co-operative and that the offending vehicle bearing registration no. HR-47D-3785 was driven by respondent no.2 in a rash and negligent manner. This witness was thoroughly cross-examined by the Ld. Counsel for respondents. However, no such inconsistency or contradiction has emerged from her cross-examination which may throw doubt on her version regarding the accident. Statement of this witness also stands corroborated by Ex.PW1/3, certified copies of criminal case record filed U/s 279/304A IPC by the investigating officer against the respondent no.2/Shri Achhey Main. The certified copy of FIR bearing No.369/08 PS Badarpur, the certified copy of site plan, Ex.PW1/5 and arrest memo of driver of the offending vehicle, Ex.PW1/7 has also been filed on record. To determine the negligence of the driver of the offending vehicle, I am being guided by the judgment of Hon"ble High Court of Delhi in case titled National Insurance Company Ltd. Vs. Smt. Pushpa Rana and Others, wherein the Hon"ble High Court has held that in case the petitioner files the certified copies of the criminal record or the criminal record showing the completion of the investigation by the police or issuance of charge sheet u/s 279/304A IPC or the certified copy of the FIR or the recovery memo of the mechanical inspection report of the offending vehicle, then these documents are sufficient proof to reach to a conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Further, in case titled Kaushnumma Begum & Ors. v. New India Assurance Company Limited, 2001 ACJ 421 SC, the issue of wrongful act or omission on the part of driver of the motor vehicle involved in an accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would make the petition maintainable u/s 166 and 140 of the Act. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because of the fact that the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one. Therefore, reading all the documents filed by the petitioner as a whole, it is clear that respondent no.2 was driving the vehicle in rash and negligent manner.

7. In view of the above discussions and particularly in view of no controverting evidence on behalf of the respondent no.2/driver of the offending vehicle, it stands proved on record that deceased had sustained fatal injuries due to rash and negligent driving of respondent No.2 while driving the offending vehicle. Issue no.1 is, therefore, decided in favour of the petitioners and against the

respondents.

3. It is true that no eye witness has been examined in this case. It has to be borne in mind that the Motor Vehicles Act does not envisage holding a trial for a Petition preferred u/s 166 of the Act. u/s 168 of the Act, a Claims Tribunal is enjoined to hold an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. In *State of Mysore v. S.S. Makapur*, 1993 (2) SCR 943, the Supreme Court held that the Tribunals exercising quasi-judicial functions are not courts and are not bound by strict rules of evidence. The relevant portion of the report in *State of Mysore* (supra) is extracted hereunder:

.....that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can unlike courts, obtain all information for the points under the enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity depend on the facts and circumstances of each case but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

4. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, the Supreme Court held that in a Petition u/s 166 of the Act, the Claimants were merely to establish their case on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

5. The report in *Bimla Devi* (supra) was relied on by the Supreme Court in its latest judgments in *Parmeshwari Vs. Amir Chand and Others*, and *Kusum Lata v. Satbir*, (2011) 3 SCC 646.

6. Turning to the facts of the instant case, it may be noticed that Madan Malhotra was an eye witness to the accident in question. He, unfortunately, expired on 26.09.2009. (A copy of the Death Certificate was produced during the hearing of the Appeal). Smt. Sakshi Bhutani (deceased's widow) testified about the rashness and negligence on the part of the Respondent No.4. Admittedly, she

was not an eye witness to the accident. Possibly she could not have deposed as to the manner of the accident. At the same time, she placed on record the certified copy of the report u/s 173 Cr.P.C., copy of the FIR, copy of the site plan, mechanical inspection report, arrest memo of the driver, etc.etc. Mere filing of a criminal case may not necessarily be proof of negligence on the part of the person accused of an offence. However, while dealing with a Petition u/s 166 of the Act, the Claims Tribunal and the Courts are required to analyse the evidence produced as proof of negligence. Admittedly, negligence is not required to be established beyond reasonable doubt as is expected to be done in a criminal trial. A certified copy of the report u/s 173 Cr.P.C. depicted the manner of the accident which was supported by the mechanical inspection report in respect of offending vehicle No.HR-47D-3785 and Scooty No.HR-51-AB-7654. The Respondents No.4 and 5 filed a joint written statement denying any negligence on the part of the Fourth Respondent in the accident. They preferred not to adduce any evidence to rebut the documentary evidence. Rather they were ordered to be proceeded ex parte by an order dated 07.03.2011. The Respondent No.4 has not given any explanation as to why he was prosecuted in the criminal case. He has not come forward with an explanation as to the circumstances in which the accident took place. In this view of the matter, the Claims Tribunal was justified in drawing an inference of negligence on the part of the Fourth Respondent. The finding on negligence reached by the Claims Tribunal cannot be faulted.

QUANTUM OF COMPENSATION:

7. In the grounds of Appeal, it is simply averred that the compensation awarded is exorbitant. It has not been pointed out as to how the compensation awarded is exorbitant. The deceased was carrying out business in the name and style of M/s. Kaya Boutique. He was an Income Tax Assessee and had returned an income of Rs. 99,200/- in the A.Y. 2006-07, Rs. 98,570/- in the A.Y. 2007-08 and Rs. 1,14,850/- in the A.Y. 2008-09. The Claims Tribunal accepted the deceased's income to be Rs. 1,14,850/-, deducted 1/4th towards personal and living expenses considering the number of dependents to be four and applied a multiplier of "14" which was in consonance with the Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, The Claims Tribunal awarded a sum of Rs. 40,000/- towards loss of love and affection and Rs. 10,000/- each towards funeral expenses, loss of consortium and loss to estate. Normally, a compensation of Rs. 25,000/- is awarded towards loss of love and affection. In an award of Rs. 12,75,960/-, grant of a compensation of Rs. 40,000/- as against Rs. 25,000/- (towards loss of love and affection) would not impel this Court to interfere with the award. The overall compensation of Rs. 12,75,960/- awarded by the Claims Tribunal is just and reasonable. The same does not call for any interference.

8. The Appeal is devoid of any merit; the same is accordingly dismissed.

9. The compensation awarded shall be released in favour of the Claimants in terms of the order passed by the Claims Tribunal.

10. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.