
(2011) 11 AHC CK 0106
In the Allahabad High Court
Case No : F.A.F.O. No. 856 of 2005

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Prem Lata Verma and others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Evidence Act, 1872 — Section 155, 4, 58

Motor Vehicles Act, 1988 — Section 114, 161, 166, 168, 173

Citation : (2011) 6 ADJ 6429

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh and S.C. Chaurasia, JJ.—Heard Sri U. P. S. Kushwaha learned counsel for the appellant-company. Sri Sanjay Tripathi, learned counsel for the claimants/respondents and perused the record.

2. The instant appeal has been preferred u/s 173 of Motor Vehicles Act. 1988 against the impugned award dated 29.7.2005 passed by Motor Accident Claim Tribunal/Additional District Judge, Court No. 10. Lucknow in Claim Petition No. 536 of 2001.

3. In brief, facts of the case, are that the accident occurred on 23.8.2000 at about 10.30 a.m. The deceased was traveling in Jeep No. U. P. 42-B 3420 and was going from Faizabad to Ambedkar Nagar. When the Jeep arrived at Village-Rajpur, the Truck bearing No. U. P. 78/9555 coming from reverse direction, being driven rashly and negligently, hit the Jeep, inspite of fact that the driver of the Jeep went left side of the road. In the said accident, the deceased-Rakesh Kumar Verma. occupying a seat in the Jeep, succumbed to his serious injuries on spot. An F.I.R. of the incident was lodged.

4. The dependents of deceased approached the Tribunal claiming compensation by filing the claim petition. During the course of trial, learned Tribunal framed

four issues. The Issues are with regard to accident in question, insurance of Jeep and Truck, driving licence of drivers and quantum of compensation. Issue No. 1 relates to accident in question.

5. While assailing the impugned award, it has been submitted by learned counsel for the appellant that in the F.I.R. lodged with regard to accident. Truck number has not been given. It has further been submitted by learned counsel for the appellant that the Truck in question was seized from the house of its owner and when the truck was inspected, it was not found to be damaged. It has also been submitted that in the F.I.R. it has been shown that the vehicle was moving towards each other from reverse direction, but, while making oral statement, it has been stated that the driver of Jeep had gone on left side and almost stopped the jeep. It has been further submitted by learned counsel for the appellant that a false case has been cooked up and accident has not occurred from the Truck in question.

6. While defending the impugned award, learned counsel for the claimants/respondents submits that merely because the number of Truck has not been mentioned in the F.I.R. shall not make out a case to disbelieve the factum of accident since the F.I.R. is not a substantial piece of evidence. While pressing the cross-objections, learned counsel for the claimants-respondents submits that the interest given by the Tribunal is from the date of judgment whereas It should have been given from the date of moving of the application before the Tribunal. Learned counsel for the respondents has also argued that both Jeep and Truck were insured by the appellant-insurance company, hence, in any case, liability of insurance company shall always be to pay the compensation.

7. With regard to the argument of learned counsel for the appellant that it is a case of hit and run and compensation should be paid u/s 161 of the Motor Vehicles Act, learned counsel for the respondents submits that the claim petition was filed u/s 166 of the Motor Vehicles Act and the claimants are entitled for just and proper compensation in terms of provision contained u/s 168 of the Motor Vehicles Act. It is also stated that the photocopy of the driving licence unless is disputed as false and forged, cannot be thrown out.

8. We have heard learned counsel for the parties at length and perused the record.

9. From the perusal of original record, it appears that claim petition was filed by the claimants/respondents with specific pleading that the accident was caused by the Truck bearing No. U. P. 78/9555. In reply to the averments made in para 11 of the claim petition filed by the claimants/respondents where the Truck number has been indicated, the appellant while filing reply, in para 7, has stated that claimants are required to put strict proof to substantiate their claim set forth in the claim petition. Thus, it appears that the appellant while filing written statement has categorically not denied, but, has only stated that the plaintiff's-claimants should substantiate by evidence with regard to involvement of Truck.

However, the owner of vehicle while filing written statement had stated that Truck was not involved in the accident and when the technical examination of the truck was done, no damage was found. The Truck was seized by the police from the residence of its owner. Record further reveals that the alleged vehicle was standing at the residence of respondent No. 1 and fitness test of truck was, conducted on 30.8.2000 Thus, it appears that fitness test was conducted almost after a week from the date of the accident in question. The accident occurred on 23.8.2000 and the Truck was examined on 30.8.2000, after a gap of almost one week.

10. Keeping in view the fact that there was a gap of almost one week from the date of accident and the date of examination of the Truck, that too, when the Truck was in possession of its owner, it cannot be ruled out that damage caused to the Truck could have been repaired. Things would have been different in case examination of the Truck would have been done immediately after the accident.

11. Learned counsel for the appellant has relied upon a case in 2000 ACJ 469 (SC) , where their Lordships of Hon"ble Supreme Court held that in case the photocopy of driving licence is not admitted and is denied, then it cannot be relied upon by the Tribunal. In such a situation, it shall be obligatory on the part of claimants to certify the driving licence by using evidence. The operative portion from the case of United India Insurance Co. Ltd. (supra), is reproduced as under :

3. Learned counsel for the appellant submitted that the point regarding validity of the driver's licence was raised by the appellant before the Motor Accidents Claim Tribunal and the Tribunal in accepting photocopy of a document purporting to be the driver's licence and recording a finding that the driver had a valid licence, has committed a grave error of law. He also submitted that the High Court has not dealt with the said contention of the appellant and without giving any reason has dismissed the appeal.

The Tribunal and also the High Court have failed to appreciate that production of a photocopy was not sufficient to prove that the driver had a valid licence when that fact was challenged by the appellant and genuineness of the photocopy was not admitted by it. Therefore, the judgment and order passed by the High Court in F.A.O. No. 2368 of 1998 deserves to be set aside. We accordingly, allow this appeal and remit the matter back to the High Court for deciding the said appeal afresh after giving an opportunity of hearing to the parties.

12. A plain reading of judgment of the Hon"ble Supreme Court in the case of United India Insurance Co. Ltd. (supra) reveals that in event of filing of photocopy, in case, it is denied by the contesting respondents categorically then the claimants should adduce evidence to prove the genuineness of the driving licence calling a report from Regional Transport Officer. In the present case, neither any written response/objection has been filed by the appellant nor any document is on record which may reveal that the genuineness of photocopy of

driving licence has been doubted by the appellant.

13. Sri U. P. S. Kushwaha, learned counsel for the appellant, has vehemently argued that there was no occasion for the appellant to file objections denying the genuineness of photocopy of driving licence, since, it was filed at later stage.

14. We are afraid to accept the argument of learned counsel for the appellant. Only because during the course of trial at latter stage a document is filed or may be at belated stage, shall not absolve the contesting respondents to raise objection, disputing the genuineness of a document. In case, the appellant was of the view that photocopy of driving licence filed was forged or was not genuine, then it was incumbent on the appellant to file objections and raise plea against it, so that the claimants could have led evidence defending its genuineness. It was on account of inaction on the part of the appellant and in the absence of any objection filed thereon, the Tribunal had relied upon the photocopy of the driving licence and held that the driver of the Truck was having genuine driving licence.

15. Section 58 of the Evidence Act provides that the facts which are admitted and not disputed, can be relied upon by the Court or Tribunal. Attention of this Court has not been invited towards any objection filed before the Tribunal. From perusal of the original record which is before this Court, it appears that the appellant had not filed objections before Tribunal assailing the photocopy of driving licence.

16. In view of the finding recorded by the Tribunal with regard to genuineness of document, we are not inclined to interfere in the present appeal. A mere oral submission made by the appellant at the belated stage with regard to genuineness of the document, shall not suffice to discredit it. Case is to be decided on the basis of evidence and pleading on record.

17. One another case relied upon by learned counsel for the appellant is in *Oriental Insurance Co. Ltd. v. Premlata Shukla and others.* (2007) INSC 581 : 2007 (2) ACCD 983 : 2007 (3) AWC 2476 (SC), to substantiate his argument that since the vehicle number was not mentioned in the F.I.R. and there is change of stand on part of claimants, the findings could not have been recorded with regard to involvement of Truck.

18. Law is very well-settled that the F.I.R. is not a substantive piece of evidence. Moreover, it is not a case of changing of stand. From the very beginning the involvement of Truck has been asserted in the F.I.R, though, number of Truck has not been given therein. While filing the claim petition, in para 11. it has been categorically pleaded with regard to involvement of Truck in question giving therein the number of the truck. The averments contained in para 11 of the claim petition, have not been categorically denied except, stating that claimants should prove their case by cogent and material evidence. The claimants have proved their case by oral evidence stating that the accident was caused by Truck No. U. P. 78/9555. In case, the appellant wanted to assail the pleadings on record then, there could have been specific pleading denying the averments contained in para

11 of the claim petition which seems to have not been done.

19. The strict Rules of pleading envisaged in C.P.C. does not apply to cases adjudicated by Motor Accident Claims Tribunal. The controversy should be adjudicated on the basis of complaint filed and reply submitted by respondents in the claim petition before the Tribunal supported by oral evidence led by the parties. The principle of *res ipsa loquitur* should also be kept in mind while deciding the case under the Motor Vehicles Act. This aspect of the matter, has been dealt with by a Division Bench of this Court of which one of us (Hon''ble Mr. Justice Devi Prasad Singh) was a member. The operative portion of the judgment and order dated 26.4.2010, passed by the Division Bench (*supra*), in F.A.F.O. No. 787 of 2008. is reproduced as under :

J. This Court in the matter of Delhi Transport Corporation u. Brijesh Kumar and another, 1995 ALJ 520 pleased to observe that :

the strict rules of pleadings as envisaged by the C.P.C. do not apply to the compensatory proceedings before the Claim Tribunals originating in realms of social justice to the victim of road accidents. The basic requirement is that a petitioner should broadly set up his case to apprise the opposite party of the necessary particulars of accident in the format provided by the Rules framed under the Motor Vehicles Act.

2. It has also been held in National Insurance Co. Ltd. Vs. Mahfooza Begum and Others, , that a Tribunal is not a regular civil court and, hence, the strict rule of C.P.C. and Evidence Act do not apply to a Tribunal.

3. The Division Bench of this Court in the matter of Subhan Ali and another v. Salim Ahmad and another. 2006 (24) LCD 670. while discussing the standard of proof required in deciding the accident claims pleased to held that claim petitions have to be decided on the basis of preponderance of probabilities. The relevant para 12 of the same reads as under :

In our opinion, this is not a sufficient ground for rejection of evidence of a witness, specially, when he was subjected to lengthy and searching cross-examination and no material could be elicited from him to discredit his testimony. The respondent No. 1, who was driving the vehicle, had no courage to enter the witness box and deny the case pleaded by the appellants. It appears that the learned Tribunal has applied the standard of appreciation of evidence required for criminal trials, where the prosecution has to prove its case beyond all reasonable doubts, whereas in a motor accident petition that standard of proof is not required. Such petitions have to be decided on the basis of the preponderance of probabilities and the circumstances emerging from the pleadings and the evidence led by the parties. The case pleaded by the respondent No. 1 in his written statement was that the deceased himself collided with the rear part of the jeep. If it was so, he should have come in the witness box to depose this fact. In absence of any evidence to the contrary, the rejection of the evidence of P.W. 2 Vijay Kumar by the learned Tribunal was not justified.

Moreover, there was no material against this witness to dub him as an unreliable witness. It is true that he was the sole witness to prove the manner of accident, but law does not require any particular number of witness to prove a fact. One credible witness outweighs the testimony of number of witnesses. Law provides the cross-examination as one of the mode in which the credibility of a witness can be impeached. But the cross-examination is not the only mode for impeaching the credit of a witness. It may also be done by other ways e.g. by giving independent evidence of the following facts as permitted and provided u/s 155 of the Evidence Act.

4. In the case of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , it has been observed by their Lordships that :

The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sort to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the word *res ipsa loquitur* is that the accident "speaks for itself or tell its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at page 306 states "The maxim *res ipsa loquitur* applies whenever it so improbable that such an accident would jury could find without further evidence at it was so caused". In Halsbury's Laws of England. 3rd Ed. Vol. 28. at page 77, the position is stated thus "An exception to the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural interference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence, tells it own story, of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of thing does not happen if those who had the management used proper care. Applying the principles stated above, we have to see whether the requirements of the principle have been satisfied.

5. Subsequently, in the case of Syad Akbar Vs. State of Karnataka, , their Lordships of Hon"ble Supreme Court while applying the principle of "*res ipsa loquitur*" held as under :

It is now to be seen, how does "*res ipsa loquitur*" fit in with the conceptual pattern of the Indian Evidence Act. Under the Act, the general rule is that the

burden of proving negligence as cause of the accident, lies on the party who alleges it. But that party can take advantage of presumption which may be available to him to lighten that burden. Presumptions are of three types :

- (i) Permissive presumptions or presumptions of fact.
- (ii) Compelling presumptions of law (rebuttable).
- (ii) Irrebuttable presumption of law or "conclusive proof.

Classes, (i) (ii) and (iii) are indicated, in Clauses (1), (2) and (3) respectively of Section 4, Evidence Act "Presumptions of fact" are inferences of certain facts patterns drawn from the experience and observations of the common course of nature the constitution of the human mind, the springs of human action, the usage and habits of society and ordinary course of human affairs. Section 114 is a general section dealing with presumption of this kind. It is not obligatory for the Court to draw a presumption of fact. In respect of such presumption the Act allows the Judge a discretion in each case to decide whether the fact which u/s 114 may be presumed has been proved by virtue of that presumption.

Such simplified and pragmatic application of the notion of *res ipsa loquitur*, as a part of the general mode of inferring a fact in issue from another circumstantial fact, is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are : Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing aperringly towards the guilt of the accused. Thirdly, the circumstances shown make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt.

6. In Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , while considering the question regarding the applicability of Rule in Ryland v. Fletcher in the cases arising out of motor accidents, observed as under" :

Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and death are taking place on the roads on account of the motor vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and Run" cases where the drivers of motor vehicle who have caused the accident are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorists whether negligently or

not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the death and injuries cause in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicle accident as a liability without fault.

20. The case of *Premlata Shukla* (supra) relied upon by the learned counsel for the appellant, does not seem to apply in the facts and circumstances of the present case.

21. Apart from above due weightage should be given to the fact that after due investigation, the police had submitted charge-sheet and while submitting the charge-sheet, the police had recorded a finding with regard to involvement of Truck in question, which has not been rebutted by the appellant while filing the written statement before Tribunal. There is one more weighty reason under which the insurance company may be held responsible for payment of compensation. Admittedly, the Jeep as well as Truck, both, were insured by the appellant-insurance company. Though, Sri U. P. S. Kushwaha, learned counsel for the appellant-insurance company, has submitted that the name of the Jeep driver was not disclosed and it is not a case of contributory negligence, but, pleading is only with regard to conduct of the Truck driver, who has caused accident in question. But, the fact remains that both the vehicles were insured by the appellant-insurance company. In such cases, where both vehicles are insured with the same insurance company, then it shall be justified to hold the insurance company responsible for payment of compensation, of course, subject to fulfilment of necessary conditions under the insurance policy.

22. Now, it is settled law that the interest should be given from the date of moving of application before the Tribunal, but the Tribunal has granted interest only from the date of award, i.e., 29.7.2005 at the rate of 8% per annum. Accordingly to that extent, we allow the cross-objections and modify the Tribunal's award dated 29.7.2005 holding that claimants/respondents shall be entitled for interest at the rate of 8% from the date of moving of application before the Tribunal, till actual payment is made.

23. In view of the above, we do not find any reason to interfere in the impugned award dated 29.7.2005. Accordingly, we dismiss the first appeal from order filed by the appellant-insurance company and allow the cross-objections to the extent that claimants/respondents shall be entitled for interest from the date of moving of application before the Tribunal, till actual payment is made. The entire amount deposited before this Court, shall be remitted to Tribunal by the registry forthwith and the Tribunal shall release the same immediately in favour of the claimants-respondents in terms of award say within a month. The appellant shall deposit the rest of the amount, in case already not deposited, within a period of two months before the Tribunal.

24. Sri U. P. S. Kushwaha, learned counsel for the appellant, shall communicate this order to the appellant-insurance company immediately for compliance.