
(2008) 12 AHC CK 0031
In the Allahabad High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Rehana Begham and Others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 2 AWC 1089

Hon'ble Judges : V.M. Sahai, J;Ran Vijay Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.M. Sahai and Ran Vijay Singh, JJ.—The facts in brief are that an accident took place on 23.3.2003 at about 6.00 p.m. while Israr Khan, Additional District Government counsel was going on his motor cycle No. 8849 to his residence. The driver of truck No. D.L.-1-G.B./0895 dashed the motor cycle from behind. Due to the injuries received in the accident Israr Khan died on the same day. The claimants filed M.A.C.P. No. 105 of 2004 claiming compensation. The claim petition had been allowed by the Motor Accident Claims Tribunal by its award dated 1.9.2008 awarding Rs. 6,23,612 compensation with 6% interest. The award dated 1.9.2008 has been challenged in this appeal.

2. We have heard Shri Ramesh Singh, learned Counsel for the appellant. He has urged that it was not a case of accident but it was a planned murder by use of the truck, therefore, the claimants were not entitled for compensation. He further urged that the Tribunal could not have directed the insurance company to pay the amount of compensation to the claimant and then recover it from the owner. Learned Counsel for the appellant has also relied on a decision of Apex Court in United India Insurance Co. Ltd. v. A.N. Subbulakshmi and Ors. 2008 (4) TAC 381 : 2008 (3) ACCD 1666 (SC) : 2008 (4) AWC 3818 and decision of Bombay High Court in United India Insurance Co. Ltd. v. Anubai Gopichand Thakara and

Ors. 2008 (1) TAC 948 : 2008 (2) ACCD 1155 (Bom).

3. The Motor Accident Claims Tribunal after examining the evidence on record has held that it was a case of the accident. It has further held that the driver of the truck Sarvesh Kumar Singh alias Lakkarh Singh did not have a valid driving licence, therefore, the owner of the truck was liable to pay the amount of compensation.

4. The learned Counsel for the appellant has urged that the F.I.R. was lodged u/s 302, I.P.C., this itself establishes that the case before the Tribunal was of planned murder and not of accident. The statements recorded or the evidence led before the criminal court does not have any binding effect in proceedings under the Motor Vehicles Act, 1988. Mere lodging of a F.I.R. u/s 302, I.P.C. would not lead to an inference that Israr Khan was murdered in a planned way by use of motor vehicle. The appellant had not examined the person who had lodged the F.I.R. The contents of F.I.R. is not usually accepted to be true unless corroborated by evidence. The driver of the truck had also not been examined. The appellant was required to prove by evidence before the Motor Accident Claims Tribunal that it was a case of murder. On the other hand the claimants had examined P.W. 1 Smt. Rehana Begum and Smt. Shahana as P.W. 2 to prove the fact of accident. The Apex Court in Rita Devi and Ors. v. New India Assurance Co. Ltd. and Anr. (2000) 5 SCC 112 : 2000 (3) AWC 1860 (SC). in paragraph 10 has held as under:

The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any felonious act then such murder is an accidental murder.

5. Applying the test laid down by the Apex Court we have examined the material on record to find out as to whether it is a case of murder simpliciter. Before the Motor Accident Claims Tribunal the appellant had not led any evidence to prove that it was a case of murder of Israr Khan. We do not find any illegality in the award of the Tribunal.

6. The other argument of the learned Counsel for the appellant is that the Tribunal has recorded the finding that the owner of the vehicle was liable to pay compensation, therefore, it was not open to the Tribunal to direct the insurance company to pay the awarded amount to the claimants and subsequently recover it. from the owner of the vehicle. The argument cannot be accepted. In A.N.

Subbulakshmi's case the Apex Court was considering the provisions of Section 95(2)(a) of the Motor Vehicles Act, 1939. It was held that the liability of the insurance company was limited to statutory liability which could not exceed Rs. 50,000. The direction of the Tribunal to the insurance company to pay the entire amount of compensation to the claimants and then to recover it from the insurer, was held to be without any sanction of law. In Anubai Gopichand Thakare's case, the learned single Judge of the Bombay High Court has held that the Motor Accident Claims Tribunal does not possess any statutory power to direct the insurance company to pay the amount of compensation and then recover it from the owner of the vehicle. The reason given by the learned Judge is that the direction given by the Apex Court in various cases to the effect that the insurance company should pay the amount to the claimants and then recover it from the owner had been issued under Article 142 of the Constitution of India, and had been made for doing complete justice between the parties. According to the learned Judge this power is not possessed by the High Court or to the Claims Tribunal. The Tribunal, therefore, could not direct the insurance company to pay the amount to the claimants and then recover it from the owner.

7. The Apex Court in a three Judges Division Bench decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, in paragraphs 104 and 105 has held as below:

104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

8. In view of the decision in Swaran Singh's case we are not able to persuade ourselves to accept the view taken by the Bombay High Court in Abubai Gopichand Thakare's case.

9. We have already held above that the decision in A.N. Subbulakshmi case was on its own facts. Further the Division Bench of two Judges did not consider the decision in Swaran Singh's case. It is well-settled rule of practice and procedure that decision of larger Bench on the same point has to be followed. Considering the beneficial object of the Act, we are of the opinion that liability of the insurance company to satisfy the award first and thereafter recover the amount from the owner of the vehicle is based on principles of stare decisis, have to be followed.

10. No other point has been raised or argued before us.

11. For the aforesaid reasons we do not find any merit. This appeal fails and is hereby dismissed.

The amount of Rs. 25,000 deposited by the appellant in this Court u/s 173 of the

Motor Vehicles Act, 1988 shall be remitted by the Registry to the Motor Accident Claims Tribunal within one month and shall be included in the amount to be paid by the appellant to the claimants.