

(2016) 07 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : FAO No.1786 of 2016.(O&M)

Oriental Insurance Company Limited	Vs	APPELLANT
Balinder Pal @ Varinder Singh		RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) 1 PLR 253

Hon'ble Judges : Mr. Harinder Singh Sidhu, J.

Bench : Single Bench

Advocate : Mr. Ashwani Talwar, Advocate, for the Appellant-Insurance Company

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J. - By filing this appeal, the Oriental Insurance Company Limited has challenged the Award dated 03.12.2015 passed in MACT No.22 of 01.06.2015 by the Motor Accident Claims Tribunal, Patiala (for short "the Tribunal") awarding compensation of Rs.8,62,000/- along with interest for the death of Arun Kumar in a motor vehicular accident.

2. Brief facts of the case are that on 20.7.2014, at about 8.30 a.m., Arun Kumar and his friend Hanish Kumar were returning to Rajpura from Naina Devi Mandir on their motorcycle bearing registration No.PB-23L- 5525. Arun Kumar was driving the said motorcycle. When they had reached near bus stand of village Jansua, the motorcycle was hit by Bolero Jeep bearing registration No. PB-65V-5808, which was being driven by Nirmal Singh - respondent No.3 at a very fast speed and in an utterly rash and negligent manner. As a result of the accident, Arun Kumar and Hanish Kumar fell on the road. Respondent No.3- Nirmal Singh stopped the offending vehicle at some distance but on seeing the condition of the injured, he ran away. Hanish Kumar had noted the registration number of the offending vehicle. The injured were shifted to Gian Sagar Hospital, Banur. From there, Arun Kumar was referred to the PGI, Chandigarh. Later on, he was admitted in Government Hospital, Sector 32, Chandigarh, where, he

succumbed to the injuries on the same day at about 9 p.m. FIR No.115 dated 21.07.2014, under Sections 279, 337, 304-A, 427 IPC was registered at Police Station Shambu regarding this accident.

3. The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 24 years and was working as skilled helper, earning Rs.30,000/- per month.

4. Upon notice, respondent No.3-Nirmal Singh (driver of the offending jeep) and respondent No.4-Harbhajan Singh (owner of the offending vehicle) filed written reply denying the involvement of their vehicle in the accident in question. They further pleaded that a false FIR was got registered involving their vehicle in order to extract compensation from them. Appellant - insurer filed separate written reply wherein the fact that the vehicle was insured with it, was not disputed. However, the involvement of the offending vehicle in the accident was denied.

5. On the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether deceased Arun Kumar had died in a motor vehicular accident which took place due to rash and negligent driving of Bolero Jeep bearing No. PB-65V-5808 by respondent No. 1? OPA

2. Whether the claimants are entitled to the compensation, if so, to what extent and from whom? OPA.

3. Whether respondent No.1 was not having a legal and valid driving licence at the time of alleged accident, if so its effect? OPR No.1 & 3.

4. Whether respondent no.2 has committed breach of any other condition of the insurance policy? OPR No.1 & 3.

5. Relief."

6. On appreciation of evidence led by the parties, the Tribunal assessed the income of the deceased at Rs.6500/- per month and considering that he was unmarried, deducted 1/2 towards his personal and living expenses. Multiplier of 18 was applied and total loss of dependency was assessed at Rs.7,02,000/- ($6500/2 \times 12 \times 18$). Rs.25,000/-, Rs.1,00,000/- and Rs.10,000/- were awarded under the heads of "funeral expenses", "loss of love and affection" and "loss of estate", respectively.

7. Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

8. Challenging the Award, it is argued on behalf of the appellant - Insurance Company that involvement of the offending vehicle in the accident is manipulated by the claimants. It has been stressed that Hanish Kumar, who was the author of the FIR in the case though appeared before the Tribunal as PW1 and stated about the involvement of the offending vehicle and its rash and negligent driving but the same witness while appearing before the Judicial Magistrate Ist Class,

Rajpura in the criminal case, resiled from his statement, which resulted in acquittal of Nirmal Singh - respondent No.3 vide judgment dated 5.11.2015 of the JMFC Rajpura.

9. In other words, the sole argument on behalf of the appellant is that as on the statement of the same witness before the criminal court, the alleged accused has been acquitted by the Criminal Court, the statement of such witness recorded before the Tribunal in claim case cannot be relied upon to determine the involvement of the vehicle in the accident.

10. This argument does not appear to have been specifically raised before the Ld. Tribunal and there is no discussion regarding the same in the award of the Tribunal.

11. However, I do not find any substance in the aforesaid argument in view of decisions of different High Courts holding that the Tribunal is to adjudge the case only on the basis of evidence produced before it and not on the basis of testimonies given before the criminal court.

12. In *Municipal Committee, Jullundur v. Shri Romesh Saggi and others* AIR 1970 P&H 137, a Division Bench of this Court considered the question:

"Whether the judgment of a criminal court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accident Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act and if not, for what purposes and to what extent can such a judgment be availed of by the parties concerned?"

Answering the same, it was observed as under:-

33. To sum up in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming -- but not holding -- that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

34. It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the Criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

35. For the reasons recorded in OUT separate judgments, we answer the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance

with law:-

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and its findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such judgment can however, be relevant only for the purpose and to the extent specified in Section 43 of the Evidence Act"

13. It was held that the judgment of the Criminal Court determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under the Motor Vehicles Act. The findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such a judgment is relevant only to the extent specified in Section 43 of the Evidence Act.

14. The above view was reiterated in *Krishan S/o Mangiram v. Tarawati Widow and Others* 2011 (3) PLR 29. It was held that a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal and the Tribunal will consider the issue of negligence on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein.

"3. It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court. It cannot be used for any other purpose, unless it is a case of conviction rendered on admission before the criminal Court where the conviction by the criminal Court on an issue of negligence will have immense value before the Tribunal."

15. In *The General Manager, Bihar Road Transport Corporation v. Smt. Uma Rani Behura and others* 1998 WBLR 344, a Division Bench of the Calcutta High Court held that a judgment of acquittal in a criminal case is admissible in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. But the findings of the criminal Court are not binding on the civil case.

"7. A judgment of acquittal passed in a criminal case is admissible in evidence in

a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. It is now well settled principle of law that the findings of a criminal Court are not binding on the Civil Court although the converse is true."

16. In *Hem Ram and Another v. Krishan Chand and Another* 2015(9) R.C.R (Civil) 311, it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently, but his acquittal would be no ground to dismiss the claim petitions.

"28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?

29. It is beaten law of land that if conviction is recorded by the Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions"

17. In *Delhi Transport Co. and Another v. Navjyot Singh and Others* 2015(7) R.C.R (Cr.) 586, the Delhi High Court considered the law on the subject and held that the acquittal of the driver of the offending vehicle by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case .

"7. As stated earlier, Respondents no.1 to 5 had examined PW-4 Kanhaiya Lal as an eye witness to the accident whereas Appellants had produced the driver and conductor of the bus in support of their claim that the deceased himself was negligent. It was also the contention raised on behalf of the Appellants that acquittal of the driver in the criminal case for the offence punishable under Section 304-A IPC concludes that there was no negligence on the part of Appellant no.2. The Claims Tribunal, however, made an independent assessment of the evidence to reach the conclusion that Appellant no.2 was negligent and was therefore, responsible for causing the accident .

8. It is no longer *res integra* that standard of proof of negligence in a criminal case and in a claim petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) are different. It is also well settled that de hors acquittal of the driver in a criminal case , the Claims Tribunal is expected to make an independent inquiry to reach a conclusion whether the negligence on the part of driver of the offending vehicle had been proved on the touchstone of preponderance of probability. Reiterating these principles in *N.K.V. Bros. (P) Ltd. v. M. Kurumai Ammal*, (1980) 3 SCC 457, the Supreme Court held as under:-

"2.The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient

under the law of tort to create liability"

9. A Single Judge of this Court in *State of Haryana and Anr. v. Sh. Ajay Kumar & Ors.*, MAC APP.69/2005, decided on 12.11.2007 held as under:-

"Similarly the acquittal of the driver of the offending vehicle of the appellant by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case . The MACT cases have to be decided on their own footings and the same are not dependant upon the result or an outcome of a criminal case .."

10. In *Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors.*, (2009) 13 SCC 530, the Supreme Court reiterated that the test of standard of proof beyond reasonable doubt could not be applied in a claim petition under Section 166 of the Act and that the Claimants are expected to establish negligence on the touchstone of preponderance of probability."

18. In *Geeta Devi and others v. Rajesh and Others* 2011(7) R.C.R (Civil) 2097, the issue was examined in the specific context of a case where the acquittal was on the ground of the witness turning hostile. It was held that the Tribunal is not to be influenced by the fact that the eyewitnesses who had deposed before the Tribunal had turned hostile during the course of criminal proceedings. The Tribunal is required to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court.

"6. A bare perusal of the impugned order clearly reveals that there are two witnesses . While A.W. 2, Satish, has been produced as an eye- witness , NAW-2 Satish has been produced as the person who lodged the F.I.R. before the police. According to the learned Tribunal, while A.W. 2 Satish was produced as an eye-witness , NAW-2 Satish was not an eyewitness. However, the learned Tribunal has relied more upon the testimony of NAW-2, Satish, and has totally ignored the testimony of NAW-2 Satish, and has totally ignored that in the criminal trial, A.W. 2 Satish was not produced as an eyewitness of the prosecution. Interestingly, NAW-2 Satish has turned hostile before the learned Tribunal, although he had supported the case of prosecution in the criminal trial.

7. Surprisingly, the learned Tribunal has also overlooked the testimony of A.W. 3, Mahaveer. The learned Tribunal is also swayed by the fact that there was some delay in lodging of the F.I.R. before the police. But it has ignored the fact that after the death of Satyaveer, there was no one left in the family except the present appellant, an old woman, who could not have lodged the F.I.R. To say the least, the learned Tribunal has made much out of the delay in lodging of the F.I.R., meanwhile forgetting the fact that a woman who has lost her son may not be in physical or mental position to immediately lodge the F.I.R.

8. A bare perusal of impugned award also reveals that the very approach of the learned Tribunal is misplaced. Instead of analysing the testimonies of A.W. 2 Satish and Mahaveer, the learned Tribunal is influenced by the fact that those

witnesses who were produced as an eye- witness have turned hostile during the course of criminal proceedings itself. It is also more influenced by the testimony of NAW 2 Satish. It is, indeed, trite to state that while the finding of a Civil Court is binding on the Criminal Court, the finding of a Criminal Court could not and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court. In this view of the matter, the award is hereby quashed and set aside and the case is remanded back to the concerned Tribunal. The learned Tribunal is directed to decide this case within a period of three months from the date of receipt of certified copy of this judgment."

19. Thus, there is no merit in this argument of the appellant - Insurance Company.

No other point was argued.

Appeal dismissed.