
(2008) 02 AHC CK 0278
In the Allahabad High Court

Oriental Insursance Co. Ltd.

APPELLANT

Vs

Iqbal Ahmad and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Evidence Act, 1872 — Section 145

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 1151

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—This first appeal from order u/s 173 of Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") has been filed by Oriental Insurance Co. Ltd. for setting aside the award dated 1.11.1999 made in Motor Accident Claim Petition No. 10/70 of 1992 by which the Tribunal has partly allowed the petition and has directed the insurance company to pay Rs. 95,000 to the claimant within one month from the date of the award with 12 per cent interest from the date of filing the petition.

2. The claim petition had been filed on 17.1.1992 both under Sections 140 and 166 of the Act by the driver of the U.P. State Road Transport Corporation bus (hereinafter referred to as "the bus"), which he was driving on duty from Banda to Varanasi. It was stated that on 2.1.1990 at about 7 a.m. when the applicant was driving the bus, there was heavy fog and severe cold and the visibility was also very poor and when the bus reached village Bagrahi, P.S. Rajapur, District Banda, a truck bearing No. UPZ 3490, suddenly emerged from the fog from the opposite direction and hit the bus from the front side. It was alleged that the truck which was insured with Oriental Insurance Co. Ltd. was being driven rashly and negligently with great speed and was being driven without blowing the horn and without putting on the headlights. It was further stated that as a result of the said accident, the bus which the applicant was driving was badly damaged

and the applicant and some other passengers also received number of injuries. Regarding the injuries sustained by the applicant, it was alleged that on account of the said accident, he sustained injuries all over the body. He also suffered a compound fracture on the right leg and his left hand wrist was also fractured. His leg was also shortened by two inches. He, therefore, claimed damages under two heads, namely, special damages and general damages. Under the former head, he claimed Rs. 25,000 for expenditure incurred in the treatment of injuries and Rs. 2,400 for the loss of his income while under general damages he claimed Rs. 1,75,000 out of which Rs. 12,000 was claimed u/s 140 of the Act. Thus, in all, an amount of Rs. 1,90,400 was claimed u/s 166 of the Act and an amount of Rs. 12,000 was claimed u/s 140 of the Act. He has also claimed costs and pendente lite and future interest at the rate of 12 per cent per annum under both the heads.

3. The opposite party No. 1, Ram Das Singh who was the owner of the truck and opposite party No. 2, Oriental Insurance Co. Ltd. filed their written statements. The opposite party No. 1 denied that the applicant had sustained injuries as a result of the said accident. He further stated that the truck was insured with Oriental Insurance Co. Ltd. and that the alleged accident had been caused due to the rash and negligent driving of the bus driver himself while the truck involved in the accident was being driven on the proper side of the road with slow speed in conformity with the traffic rules. Opposite party No. 2 in its written statement, inter alia, alleged that the said accident had been caused by the negligence of the applicant himself and as such it was not liable to pay any compensation.

4. On the pleadings of the parties, the following issues were framed:

(1) Whether the alleged accident dated 2.1.1990 was caused due to rash and negligent driving of the truck No. UPZ 3490 wherein the petitioner sustained serious physical injuries?

(2) Whether the said truck was insured with Oriental Insurance Co. Ltd., opposite party No. 2, at the time of the alleged accident and whether the policy of insurance was valid on that date? If so, its effect?

(3) Whether the alleged accident was caused due to negligent driving of the bus No. UMV 9624 by its driver and whether the bus driver had contributed in the said accident? If so, its effect?

(4) Whether the petitioner is entitled to get the compensation as claimed by him, if so, how much and from which of the opposite parties?

(5) To what relief, the applicant is entitled?

5. Number of documents were filed by the applicant and the opposite parties. The documents filed by the opposite party No. 1 included certified copies of the awards made in Suraniya v. U.P. State Road Trans. Corporation M.A.C. Case No. 90/70 of 1990 and in Meera Devi Jaiswal v. U.P. State Road Trans. Corporation M.A.C. Case No. 71/70 of 1990, certified copy of the statement of the applicant

Iqbal Ahmad in M.A.C. Case No. 90/70 of 1990 and certified copy of the statement of Kanhaiya Lal Kapoor, conductor of the bus in M.A.C. Case No. 71/70 of 1990 had also been filed. It needs to be mentioned at this stage that in respect of the same accident two cases had earlier been decided by Motor Accidents Claims Tribunal being, Suraniya v. U.P. State Road Trans Corporation M.A.C. Case No. 90/70 of 1990 and M.A.C. Case No. 71/70 of 1990 (Meera Devi Jaiswal v. U.P. State Road Trans. Corporation). One case had been filed by the passenger of the bus claiming compensation for the injuries sustained by him in the accident and the Tribunal in both the cases held that the accident had taken place due to rash and negligent driving of the bus driver Iqbal Ahmad. It is Iqbal Ahmad who subsequently filed claim petition giving rise to the first appeal from order. In the M.A.C. Case No. 90/70 of 1990, Iqbal Ahmad was arrayed as opposite party No. 4 and he also appeared as a witness and gave his statement. The Tribunal decided issue Nos. 1 and 3 together. It was urged on behalf of the applicant that the finding recorded in the aforesaid two awards holding the driver of the bus to be rash and negligent was not binding on the Tribunal; that the two M.A.C. cases were not between the same parties and as such were not relevant under Sections 40 to 43 of the Evidence Act for the decision of the present case and that the previous statement given by the applicant was also not relevant in present case in view of the provisions of Section 145 of the Evidence Act because his attention was not drawn towards the particular part for contradicting him during the cross-examination. The Tribunal came to the conclusion that the previous awards were not binding on it insofar as the question of negligence of the driver of the bus was concerned since a judgment which is not inter se parties is inadmissible in evidence except for the limited purpose of proving as to who were the parties and what was the decree passed and what property was the subject-matter of the suit and that the recitals in a judgment like findings given after appreciation of evidence or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendants were parties. In such circumstances, the Tribunal proceeded to examine the issues on merit and found that accident had been caused due to rash and negligent driving of the truck and not due to rash and negligent driving of the bus. While deciding issue Nos. 4 and 5 the Tribunal found that the applicant had sustained injuries and had been hospitalised from 2. 1. 1990 to 30. 3. 1990 and had undergone treatment in the Medical College at Allahabad. The Tribunal noticed that the applicant had claimed Rs. 27,400 as special damages and Rs. 1,75,000 as general damages. The Tribunal held that though the applicant had not filed any documentary evidence to prove the medical expenses but looking to the injuries sustained by him and the period for which he had undergone the treatment, it would be safe to presume that the applicant had paid an amount of Rs. 15,000 as expenses towards the treatment. As for the compensation for pain and suffering the Tribunal found that the ends of justice would be met if a sum of Rs. 75,000 was awarded to him. Accordingly, the Tribunal held that the applicant was entitled to a sum of Rs. 90,000 as compensation with 12 per cent interest from the date of filing the petition and

also awarded Rs. 5,000 towards litigation cost. Mr. V.K. Birla, learned Counsel appearing for the appellant insurance company, submitted that the impugned award is liable to be set aside since the claimant was not entitled to any compensation as the accident had taken place on account of rash and negligent driving of the driver of the bus, which finding had been recorded by Tribunal in the earlier awards made in M.A.C. Case No. 90/70 of 1990 and M.A.C. Case No. 71/70 of 1990 and in fact in M.A.C. Case No. 90/70 of 1990 Iqbal Ahmad was also arrayed as opposite party No. 4 and had also appeared as a witness. He, therefore, submitted that the finding to the contrary recorded in impugned award that the driver of the bus was not negligent and rash is liable to be set aside. He further submitted that the applicant was not entitled to any compensation u/s 140 of the Act the driver had not suffered any permanent disablement on account of the accident.

6. Mr. Mansoor Ahmad, learned Counsel appearing for claimant-respondent No. 1, however, submitted that the Tribunal was justified in holding that the accident had taken place on account of rash and negligent driving of the truck and, therefore, there is No. infirmity in the impugned award.

7. The application had been filed both under Sections 140 and 166 of the Act by the driver of bus. The first question that is required to be considered is whether the applicant was driving the bus rashly and negligently because if it is so then he would not be entitled to any compensation u/s 166 of the Act.

8. The contention of the learned Counsel for the appellant is that in respect of the same accident two claim petitions had earlier been filed, namely, M.A.C. Case No. 90/70 of 1990 and M.A.C. Case No. 71/70 of 1990. These two cases had been filed by the passengers of the bus claiming compensation for the injuries sustained by them in the accident. In M.A.C. Case No. 90/70 of 1990, the present applicant Iqbal Ahmad, was arrayed as opposite party No. 4 and he had also appeared as a witness. In this claim petition as well as in M.A.C. Case No. 71/70 of 1990, Tribunal gave the awards after recording a categorical finding of fact that the accident had occurred because of the rash and negligent driving by the driver of the bus. The Tribunal has, in the award impugned in this first appeal from order not accepted the contention advanced by the appellant insurance company that the aforesaid finding about rash and negligent driving by the driver of the bus would be binding in the present case as according to it the two M.A.C. cases were not between the same parties.

9. A perusal of the award given by the Tribunal in M.A.C. Case No. 90/70 of 1990 indicates that the heirs of deceased Mohan Lal who was driving truck No. UPZ 3490 had filed the claim petition with the allegations that Mohan Lal was carefully driving the truck but the driver of bus No. UMV 9624 Iqbal Ahmad who was driving the bus rashly and negligently came from the front and collided with the truck as a result of which Mohan Lal died on the spot. The opposite parties who had been arrayed were the U.P. State Road Transport Corporation Jhansi through its Managing Director; Regional Manager, U.P. State Road Transport

Corporation, Jhansi; Additional Regional Manager, U.P. State Road Transport Corporation, Jhansi and Iqbal Ahmad (driver), Zero Road Depot, U.P. State Road Transport Corporation, Allahabad. The case set up by the Corporation was that the heirs of the driver of the truck could claim compensation from the owner of the truck and the insurance company but they had not been made parties in the case. This plea was rejected by the Tribunal after appraisal of evidence including the evidence given by the driver of the bus Iqbal Ahmad and a categorical finding was recorded that Iqbal Ahmad was driving the bus rashly and negligently. This order had attained finality because none of the parties have pointed out that the road transport Corporation or Iqbal Ahmad filed any first appeal from order to challenge the award. It is, therefore, clear that not only Iqbal Ahmad was arrayed as opposite party No. 4 in the aforesaid M.A.C. case but he had also given his evidence. The claim petition out of which the present first appeal from order arises was filed by Iqbal Ahmad. The opposite party No. 1 is the owner of truck while Oriental Insurance Co. Ltd. which had insured the truck has been impleaded as opposite party No. 2. In such circumstances the Tribunal committed an illegality in holding that the award rendered in M.A.C. Case No. 90/70 of 1990 would not be relevant in view of the provisions of Sections 40 to 43 of the Evidence Act.

10. In view of the aforesaid it has to be held that the finding recorded in the earlier M.A.C. Case No. 90/70 of 1990 would be binding in the subsequent M.A.C. Case No. 10/70 of 1992. It has, therefore, to be held that the accident had occurred on account of rash and negligent driving by the driver of the bus who has filed the claim petition.

The question that is now required to be determined is whether the driver of the bus would be entitled to any compensation u/s 166 of the Act when the accident had occurred on account of his rash and negligent driving. Under the law of Torts there is No. liability if the death or injury is caused due to negligence of the person injured. Law is also settled that a person who sustains injury on account of his own rash and negligent driving is not entitled to any compensation u/s 166 of the Act. In this connection reference may be made to the decision of Karnataka High Court in Appaji (since deceased) and Another Vs. M. Krishna and Another, wherein the provisions of Section 163-A of the Act which were added by amending Act 54 of 1994, were considered and it was observed:

(16) It is evident from the above that Section 163-A was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a motor vehicle, but only on account of their own rash, negligent or imprudent act resulting in death or personal injury to them. The recommendations of the Law Commission were concerned more with the victims of hit-and-run accident cases where the particulars of offenders could not be ascertained. It also expressed concern about the security of victims of road accidents and recommended dispensing with proof of fault on the part of the owner or driver of the vehicle. The recommendations, it is clear, were made

from the point of view of victims of accidents on the roads more than those who were responsible for the same. The Review Committee too had viewed the situation from the point of view of such victims and expressed concern about the time it took for disposal of ordinary cases before the Tribunals. The objects and reasons underlying the introduction of the provisions also envisaged adequate compensation to victims of road accidents without going into what was described as long-drawn procedure. The decision of the Apex Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, elucidated the purpose underlying the introduction of Section 163-A in the light of recommendations of the Law Commission and the Review Committee. There is nothing in any one of the above to suggest that Section 163-A was intended to be available even in a situation where the accident in question had caused death or physical injury to none except the person who was rash and negligent in using the motor vehicle. The universal concern was for the safety and the social security of an innocent user of the road and not for a person who had because of his own imprudence, rashness or negligence met with an accident and suffered an injury or death.

(20) The issue can be examined from yet another angle. Section 147 of the Motor Vehicles Act prescribes the requirement of a policy of insurance in order that the same may be said to comply with the provisions of Chapter XI. It, inter alia, envisages a policy of insurance which insures the person or class of persons specified in the policy against any liability which may be incurred by him in respect of the death or bodily injury or damage to any property of a third party arising out of the use of the vehicle in a public place. What is important is that the policy must insure the owner against "any liability which arises against him" on account of any death or injury arising out of a motor accident. In the case of an accident where the person who is killed or injured is himself responsible for the accident without the involvement of any other vehicle or agency, No. liability qua the insured would arise except where the person who is killed or injured is an employee of the insured and the accident arises out of his employment. In any such case rashness or negligence of the employee may be inconsequential for purposes of holding the employer liable to pay the compensation under Workmen's Compensation Act. The decision of this Court in *Y.R. Shanbhag Vs. Mohammed Gouse and Others*, , has taken the view that where the driver had sustained injuries due to his own driving he cannot maintain a petition under Motor Vehicles Act, his remedy being under Workmen's Compensation Act. Reference may also be made to another Division Bench decision of this Court in *B. Prabhakar v. Bachima* 1984 ACJ 582 (Karnataka), where the court observed:

From Section 110-AA, it is clear that before an application can be entertained, the accident must have occurred due to actionable negligence of the owner or the driver of the vehicle... When the accident has occurred due to actionable negligence of the deceased who was himself the driver, No. claim by his legal representatives can be entertained under the Act. That being so Section 110-AA will not come into play at all.

(21) .That being so, in the case of an accident where the person killed or injured is himself responsible for the accident, No. liability would arise against the insured nor can any such liability be enforced u/s 163-A of the Act. For a liability u/s 163-A to arise against insurance company, it is essential that such a liability must first arise against the insured and the insurance company u/s 147 of the Motor Vehicles Act.

11. Madhya Pradesh High Court in Kanhaiyalal and Another Vs. Sitabai and Others, also made similar observations:

(3) Section 163-A of Motor Vehicles Act confers a new right upon the claimants. This is a special provision as the payment of compensation is on structured formula basis irrespective of negligence. In this case the owner of motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, is to be paid to the legal heirs of the victim as the case may be. It is admitted position that when the accident occurred and claim petition was filed, the said provision was not in existence....

XXX XXX XXX Thus, Section 163-A of the Act as inserted by amending Act 54 of 1994 creates new right in favour of the claimants and it creates new liability on the owner and insurer. Therefore, the provision will be applicable to the cases where accident has occurred on the date of commencement of the Act or after the amendment. The provision will not be applicable to the accident which occurred prior to the amendment. There is No. legislative intent to apply the provisions retrospectively. Therefore, provision of Section 163-A is not applicable to the present case. At this stage the counsel for the appellants submitted that this is a hard case and liberty be given to the appellants to file petition before a competent forum for compensation. We are of the opinion that since the legal heirs are entitled for compensation under the Workmen's Compensation Act and, therefore, the appellants are permitted to avail remedy available to them before Commissioner for Workmen's Compensation. If such application is filed, the authority shall decide the application in accordance with law. Since in this case the Claims Tribunal has found that deceased Lokesh died on account of his own negligence, No. compensation is awarded. The application was filed u/s 166 of the Act and is rejected....

12. It is, therefore, clear that No. compensation can be claimed u/s 166 of the Act by a person who is himself responsible for the accident on account of his rash and negligent driving and that he cannot even claim compensation under the newly inserted Section 163-A of the Act. The question that remains to be considered is whether the applicant would be entitled to compensation u/s 140 of the Act. Section 140 of the Act is as follows:

140. Liability to pay compensation in certain cases on the principle of No. fault.--
(1) Where death or permanent disablement of any person has resulted from an

accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under Sub-section (1) the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility of such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this Section or u/s 163-A.

13. It is, therefore, clear that a departure had been made from the general principle under the law of Torts that u/s 140 of the Act the owner of the vehicle is liable for compensation for death or permanent disablement even when the accident is due to the fault of the victim. However, it has to be established that the victim suffered permanent disablement. In the present case, the Tribunal has not recorded any categorical finding of fact regarding any permanent disablement suffered by the claimant so as to entitle him to claim compensation u/s 140 of the Act. The matter is, therefore, required to be sent back to the Tribunal to examine whether the claimant had suffered any permanent disablement. It is, therefore, clear from the discussion made above that the claimant is not entitled to any compensation u/s 166 of the Act but so far as compensation u/s 140 of the Act is concerned the matter is required to be sent back to the Tribunal to determine whether the claimant had suffered any permanent disablement because it is only in such a situation that compensation can be awarded u/s 140 of the Act. Award of the Tribunal dated 11.11.1999 is, therefore, set aside and the appeal is allowed to the extent indicated above.