
(2014) 02 OHC CK 0015
In the Orissa High Court
Case No : M.A. No. 786 of 2001

Pallab Kumar Ray

APPELLANT

Vs

Ratikanta Senapati and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27 — Criminal Procedure Code, 1973 (CrPC) - Section 161 — Motor Vehicles Act, 1988 - Section 166, 169, 169(2) — Penal Code, 1860 (IPC) - Section 279, 304-A, 337

Citation : (2015) 3 ACC 340 : (2015) ACJ 732 : (2015) 120 CLT 708 : (2015) 1 ILR 801

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : A.K. Choudhury, T. Dash and K.K. Das, for the Appellant; N.K. Mishra, D. Mishra, D.K. Pani, P.K. Sahoo and A.K. Ray, for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J.?This appeal is directed against the award dated 23.8.2001 passed by Third Motor Accidents Claims Tribunal, Balasore in M.A.C.T. Case No. 51/237(c) of 2000-1997 dismissing the claim application of the claimant-appellant. The fact of the case in a nutshell is that the appellant, being the claimant, filed an application under section 166 of the Motor Vehicles Act claiming compensation of Rs. 50,000 contending, inter alia, that while he was travelling in a bus bearing registration No. ORB 5471 on 29.8.1997, the said vehicle met with an accident as a result of which he sustained bodily injuries on his person along with several other passengers. Accordingly, Bhadrak Rural P.S. Case No. 162 of 1997 was registered under sections 279/337/304-A, Indian Penal Code and charge-sheet was submitted.

2. Pursuant to notice issued by the Third M.A.C.T., Balasore, the owner of offending bus, respondent No. 1, did not appear and he was set ex parte. Insurance company, respondent No. 2, entered appearance, filed its written

statement denying the contentions raised in the claim application, and called upon the claimant-appellant to prove his case by adducing cogent evidence, but did not adduce any oral or documentary evidence in support of the plea taken by it in its written statement.

3. The claimant-appellant examined himself as PW 1 and relied upon the documents marked as Exhs. 1 to 5 in support of his contention whereas neither anybody has been examined nor any document has been exhibited on behalf of the insurance company, respondent No. 2.

4. Learned Third M.A.C.T., Balasore on consideration of the materials available on record dismissed the claim application vide judgment dated 23.8.2001 holding that the appellant has not been cited as a witness by the police in the charge-sheet filed against the driver, the F.I.R. does not disclose that the appellant received injury in the road accident while travelling in the offending bus and the claimant has not called for Outdoor Patient Register of the District Headquarters Hospital, Bhadrak. Apart from the same, claimant-appellant has not been able to give the name of the doctor who gave him medical treatment.

5. Mr. A.K. Choudhury, learned counsel for the appellant, submits that as per the provisions of law, the strict rules of pleadings should not be made applicable to the claim case filed under section 166, Motor Vehicles Act. The statute being a beneficial legislation and the proceedings being summary in nature, the learned Tribunal is to ascertain whether the person is injured due to the motor vehicle accident and the claimant is required to establish his case on preponderance of probability and the standard of proof beyond reasonable doubt could not have been applied. He relies upon the judgment of the Apex Court in the case of N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, and states that strict rules of pleadings should not be made applicable to the accident claim cases and the Claims Tribunal must take special care to see that the innocent victims do not suffer and the court should not succumb to the niceties, technicalities, etc. Further, Mr. A.K. Choudhury, learned counsel for the claimant-appellant, relying upon the judgment of the Apex Court in the case of Ravi Vs. Badrinarayan and Others, , states that F.I.R. is not an encyclopedia of the incident. While dealing with the question with regard to the scope of delay in lodging the F.I.R. regarding the accident, the Apex Court held that the purpose of lodging the F.I.R. in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of F.I.R. certainly proves factum of accident so that the victim would be able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. Apart from the same, the F.I.R., contents of the charge-sheet and the statements recorded under section 161, Criminal Procedure Code, are not substantive pieces of evidence and cannot possibly be treated as an evidence in a claim proceeding as has been held in the cases of Mataji Bewa and Others Vs. Hemanta Kumar Jena and Another, ; Smt. Anita Jena and Others Vs. Barot Chandra Pattnaik and Another, ; Chotu Lal and Another Vs. Chamali Bai and Others, ; Pidigala Linga Reddy and Others Vs. Satla

Srinivas and Others, ; National Insurance Co. Ltd. Vs. Asha Lata Rout and Others, ; Divisional Manager, New India Assurance Co. Ltd. Vs. Ahalya Bai (Smt) and Others, and Brestu Ram Vs. Anant Ram and Others, .

6. Mr. N.K. Mishra, the learned senior counsel appearing for the respondent insurance company, states that no finding of fact can be challenged in an appeal unless it constitutes a question of law or is patently perverse. He further states that it is a well settled law that a judgment based on pure finding of fact is not liable to be reviewed or reversed in any appeal. He relies upon the case of Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, and Union of India (UOI) Vs. Ibrahim Uddin and Another, . While refuting the submission made by Mr. A.K. Choudhury, learned counsel for the appellant, he submits that the learned Tribunal in paras 9 and 10 of the award has elaborately dealt with consideration of the evidence laid by the claimant-appellant which reveals that the claimant failed to prove and justify his claim in any manner whatsoever and the said finding of fact does not call for interference due to lack of perversity.

7. In view of the aforesaid facts and circumstances, the following questions arise for consideration:

(1) Whether the learned Tribunal is correct or justified in dismissing the claim application as because the claimant did not call for the Outdoor Patient Register of the District Headquarters Hospital, Bhadrak, when the learned Tribunal is empowered under section 169 of Motor Vehicles Act, 1988 read with rules 10 and 12 of the Motor Vehicles (Accidents Claims Tribunal) Rules, 1960, to call for the records or documents?

(2) Whether the F.I.R., charge-sheet and the statement recorded under section 161, Criminal Procedure Code, are substantive pieces of evidence and can be treated as evidence in a claim proceeding? and

(3) Whether the strict rules of pleadings and Evidence Act are applicable to the proceedings relating to accident claim cases and the standard of proof beyond reasonable doubt could be applicable?

8. The question Nos. 1 and 3 are interlinked to each other. In the present case the learned Tribunal dismissed the claim application on the ground that the claimant did not call for the Outdoor Patient Register of the District Headquarters Hospital, Bhadrak, and that the claimant was unable to give the name of the doctors, who gave medical treatment. The learned Tribunal should have called for the Outdoor Patient Register of the District Headquarters Hospital, Bhadrak and other relevant records/documents/papers by exercising power under section 169(2) of the Motor Vehicles Act, 1988 read with rules 10 and 12 of the Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 1960 keeping in view the benevolent statute. If the claim case is not dismissed under rule 5 of the Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 1960, the learned Tribunal is required to issue notice under rule 6 to the parties involved in the proceeding.

During course of hearing, the learned Tribunal, under rule 10, may visit the site for local inspection or examine any person likely to give information relevant to the proceeding and during the local inspection the learned Tribunal under rule 12 may examine summarily any person likely to give information. Apart from the provisions contained in Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 1960 and section 169(2) of the Motor Vehicles Act, 1988, learned Tribunal having been vested with the power of a civil court for the purpose of taking evidence, enforcing the attendance of witnesses compelling the discovery and production of documents/material objects, it could have called for the outdoor patients' records from the District Headquarters Hospital. Instead of doing so and without application of mind, dismissal of the claim petition by the Tribunal is a misconceived one.

9. The learned Tribunal has become so technical that without exercising its power under section 169(2) read with rules 10 and 12 of the Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 1960 by not calling for Outdoor Patient Register of District Headquarters Hospital, Bhadrak, and other relevant documents/papers it has come to finding that the claimant did not call for the Outdoor Patient Register of District Headquarters Hospital, Bhadrak to prove that he had received treatment at the said hospital on the fateful day. While answering question No. 3, it is found that the learned Tribunal has doubted the case of the injured claimant-appellant about his travelling in the bus and sustaining of injuries as his name did not appear in the F.I.R. and he has not been cited as witness in the charge-sheet.

10. It is not disputed that there was an accident. Only because the name of the claimant is not mentioned in the F.I.R. or in the charge-sheet that by itself does not disentitle him to the claim benefit and on that basis court cannot come to a conclusion that he has not sustained injuries. Further, non-examination of the claimant-appellant medically on police requisition or non-examination of any eyewitnesses cannot, ipso facto, disentitle the claimant to get the compensation. On the other hand, the insurance company having not produced any documents in support of its contention, the finding so arrived at by the learned Tribunal on a misconceived notion that the name of the claimant-appellant having not been found in the F.I.R. he is not entitled to get the benefit, cannot be sustained.

11. In the cases of Nanhu Singh Vs. Jaheer and Others, ; Oriental Insurance Co. Ltd. Vs. Raghunath Srichandan and Others, and Branch Manager, United India Insurance Co. Ltd. Vs. Myakala Sulochana and Others, , it has been held that the version as per F.I.R. should not be given preference over the testimony of the witnesses recorded before the learned Tribunal. But on perusal of the impugned judgment, it is found that learned Tribunal has proceeded with the claim application like conducting a criminal trial without keeping in mind the law enunciated by the Apex Court as it is borne out from the award so passed. In Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, , while dealing with a claim application it is necessary to bear in mind that the

strict proof of an accident cause by a particular bus in a particular manner may not be possible to be done by the claimants. Claimants are merely to establish their case on the touchstone of preponderance of probability. The Apex Court in the case of Om Parkash Batish Vs. Ranjit @ Ranbir Kaur and Others, , has held that the claim application filed under the Motor Vehicles Act is summary in nature and the provisions of the Civil Procedure Code or Evidence Act are not strictly applicable to such proceeding. The Tribunal must take care to see that the innocent victims should not suffer and the court should not succumb to the niceties.

12. In view of the principle of law laid down by the Supreme Court, the Tribunal should not have gone into the technicalities of the law to hold that since the petitioner's name does not find place in the F.I.R. nor in the charge-sheet, he is not entitled to compensation which is an outcome of non-application of mind. This opinion is fortified in view of the judgment of the Apex Court in Kusum Lata and Others Vs. Satbir and Others, , wherein both the Tribunal and the High Court refused to accept the presence of one of the witnesses as his name was not disclosed in the F.I.R., the Apex Court expressed displeasure with regard to approach of the learned Tribunal as well as the High Court relying upon Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, and held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The court must keep this distinction in mind. In the case of Parmeshwari Vs. Amir Chand and Others, , the Apex Court has held that in case of road accident, strict principles of proof in the criminal case are not attracted. Similarly, in Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, , the Supreme Court has held that the plea set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt.

13. In considering question No. 2, the contention raised on behalf of Mr. N.K. Mishra, the learned senior advocate for the insurance company, that the claimant-appellant having not produced any additional evidence under Order 41, rule 27, Civil Procedure Code, the court should not entertain the appeal and dismiss the same. But as per the analysis made in the foregoing paras, it appears that the learned Tribunal has not passed the award in consonance with the provisions of law and on the basis of materials available on record, rather it has decided the claim application like conducting a criminal trial though in a case of road accident the strict principles of proof in a criminal case are not attracted. In view of such position, it cannot be said that claimant did not prove that he had sustained injury due to accident caused by the offending bus and the finding of learned Tribunal that the name of the claimant-appellant being not there in the F.I.R. and having not been shown as a witness to the charge-sheet, is absolutely perverse as it is held by the Apex Court time and again that the F.I.R. and charge-sheet are not substantive pieces of evidence. But, factually the respondent insurance company having not adduced any rebuttal evidence, disputing the plea of the

claimant, the learned Tribunal should not have dismissed the claim of the claimant. Thus, the impugned award passed by the learned Tribunal rejecting the claim application filed by the claimant-appellant being an outcome of non-application of mind and a misconceived one, the same is hereby set aside. The matter is remitted back to the learned Tribunal for fresh adjudication by giving opportunity of hearing to the parties on the basis of the materials available on the record.

With the above observation and directions, the miscellaneous appeal is disposed of.