
(2006) 08 RAJ CK 0030
In the Rajasthan High Court

Pushpendra Singh

APPELLANT

Vs

Samay Singh @ Tofani and Others

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156

Citation : (2007) 1 ACC 793 : (2007) 1 RLW 339

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—In these appeals preferred by the claimant challenge is made to the judgment dated May 26, 2005 of learned Motor Accident Claims Tribunal (Special Judge Dacoity Affected Area) Bharatpur (for short "Tribunal"), whereby two claim petitions filed by the claimant were dismissed.

2. Contextual facts depict that the claimant filed two separate petitions for the loss suffered by him due to the death of his wife Pinky and son Ramu in an accident alleged to have occurred on June 21, 2002 while traveling in a Tractor No. RJ05/IR-2776. The driver of the tractor drove it rashly and negligently and overturned it resulting demise of Pinky and Ramu. The respondent insurance company in its reply before the Tribunal denied the averments and pleaded that no such accident was ever occurred and the petitions were based on incorrect facts. Learned Tribunal framed as many as five issues on the basis of the pleadings of the parties. In support of claim petitions, the claimant examined himself and Deewan Singh as AW-1 and AW-2 and produced eleven documents. Two witnesses were examined on behalf of the respondents. Learned Tribunal after hearing Final submissions dismissed the petitions holding that the claimant could not establish that Pinky and Ramu died due to the negligence of driver of the tractor.

3. I have given my anxious consideration to the rival submissions and carefully

scrutinised the material on record.

4. Undeniably the FIR in regard to accident was not lodged and a complaint was filed in the Court of Judicial Magistrate Nadbai on June 28, 2002 i.e. after seven days of the alleged incident. In the complaint which was forwarded u/s 156(3) Cr.P.C. to the police station Nadbai, the driver of the tractor was named as Rajo. The explanation of delay as stated in the complaint reads as under:

e`R;q ds ckn fjiksVZ ,oa iksLVekVZe djkus ys tk jgs Fks fd rHkh jktks o mldk cki o vU; O;fDr ogkWa vk x;s rFkk gesa jkthukek dh dgdj fjiksVZ o iksLVekVZe djkus ugha tkus fn;kA ;g fd fnukad 26-6-2002 rd fujUrj jkthukek dh dgrs jgs vkSj fnukad 27-6-2002 dks tc geus jkthukek ckcr dgk rks jktks o mlds ifjokjtuksa us dgk fd dkgs dk jkthukek ,sls ,DlhMsaV rks jkst gksrs jgrs gSaA jkst ejrs jgrs gSA ge dksbZ jkthukek ugha djsaxsA ;g fd fnukad 27-7-2002 dks tc izkFkh bl ?kVuk dh fjiksVZ djkus Fkkuk uncbZ x;k rks Fkkuksa okyksa us dgk fd xkao iM+kSI dk ekeyk gS blesa xkao esa tkdj gh lqygukek djksA fygtk vkt izkFkhZ eqLrxhl dks fcuk fdlh nsjh ds ;g bLrxklk izLrqr djuk iM+ jgk gSA

The complaint was filed by Deewan Singh and not by the claimant Pushpendra Singh. In the claim petitions however Rajo was not joined as Driver of the Tractor No. RJ05/IR/2776, but one Kunwar Singh was impleaded as Driver on the basis of information supplied by owner of the vehicle in question.

5. A look at the document e`R;q lwpuk (Ex. 9) placed on record by the claimant goes to show that Pinki Singh was admitted to GG Medical Institute & Research Centre Agra on June 21, 2002. On the same day she died on account of Cardio Respiratory Failure. In absence of medical certificate issued by competent Doctor, it is difficult to believe that Cardio Respiratory Failure was the result of the injuries sustained by Pinky singh in an accident.

6. Learned Counsel for the claimant contended that since the charge-sheet was filed against Driver Kunwar Singh in regard to the accident, Court should take judicial notice of the accident. I find no substance in the submission. In my opinion, it is for the claimant to establish that the death of deceased occurred due to the injuries sustained by them in an accident. In the absence of Post-mortem report or medical certificate no presumption could be drawn about the cause of death. To make Vehicle owner and the Insurance Company liable for compensation the claimant has to establish that the driver had driven the vehicle rashly and negligently and caused accident that resulted into the death of deceased. Unless this burden is discharged, the claim petitions cannot succeed.

7. I do not see any illegality in the impugned judgment of learned Tribunal that are based on proper application of ocular and documentary evidence.

8. Resultantly the appeals being devoid of merit stands dismissed.