
(2014) 05 RAJ CK 0088
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 720 of 1998

Ramji Lal	Vs	APPELLANT
National Insurance Company Ltd. and Others		RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 2 CDR 906

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : R.S. Mankad, for the Appellant; R.K. Singhal and Vishal Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—The instant appeal has been preferred by the appellant-claimant against the judgment dt. 15.7.1998 whereby the claim application filed by the claimant under Sec. 166 of the Motor Vehicles Act seeking compensation for the injuries allegedly suffered by him in a road accident was rejected. Facts in brief are that the appellant filed a claim application before the Tribunal pleading therein that he was coming from Jaipur to Churu on 29.11.95 in a Tempo No. RJ. 10-P-0859. The tempo was driven by its owner cum driver Ramdev Singh in rash and negligent fashion and near Fatehpur on the Churu Highway, it turned turtle. The appellant was crushed under the tempo and received numerous injuries. An information of the accident was given at the Police Station Kotwali, Fatehpur. Thereafter, the appellant was referred for treatment to the hospital at Sikar and a steel rod had to be inserted in his left leg. He also got himself treated at the Orthopedic Hospital, Delhi.

2. The appellant filed a claim application under Sec. 166 of the Motor Vehicles Act seeking total compensation of Rs. 1,37,579/-. The respondent No. 2 owner of the tempo in question filed a written statement admitting the averments made in the claim except the allegation of rash and negligent driving. It was specifically

mentioned in the written statement that the vehicle was insured and thus the Insurance Company was liable to pay the compensation. The respondent Insurance Company filed a written statement claiming that the accident did not occur as claimed by the appellant and thus the claim should be rejected. The Tribunal framed the following issues for consideration:-

(1) As to whether the respondent No. 2 Ramdev Singh drove the tempo No. RJ 10 P-0859 rashly and negligently in the night intervening on 29.11.1995/30.11.1995 and as a result thereof, the tempo met with an accident causing injuries to the claimant?

(2) As to whether the claimant is entitled to receive compensation of Rs. 1,37,579.60/-? if yes, then apportionment amongst the respondents?

(3) Relief?

3. Three witnesses were examined on behalf of the claimant. Four witnesses were examined on behalf of the non-claimants. The learned Tribunal whilst deciding the issue No. 1 noted that the criminal case as regards the accident was registered on the basis of Parcha Bayan of the claimant. The Parcha Bayan was exhibited before the trial Court as Ex. P-48 wherein it was specifically stated by none other than the appellant himself that he was proceeding from Salasar Balaji in his three wheeler with his friends Jaypal, Manoj, Hari Singh and Gopi Ram. He himself was driving the three wheeler. When they reached near Fatehpur, a fallen trunk of Babool tree was lying on the road. He tried to avoid the same and in that process, the three wheeler ran into a pothole on the road and turned turtle. This Parcha Bayan was not disputed by the appellant in his testimony. The Tribunal concluded that while filing the claim application, the name of the driver was fraudulently projected as Ramdev Singh who is none else than the appellant's brother. The claim application was filed by pleading rash and negligent driving of Ramdev Singh so as to make the Insurance Company responsible for bearing the burden of the award. Accordingly, the Tribunal rejected the claim holding that the appellant filed the claim application with a false and fraudulent averment that Ramdev Singh was driving the tempo at the time of the accident. It was concluded that the appellant was himself driving the tempo and the accident occurred due to his own negligence. Hence, this appeal.

4. Mr. Mankad, learned counsel for the appellant vehemently contended that the finding recorded by the Tribunal regarding the appellant himself driving the vehicle at the time of accident is perverse and deserves to be set aside. As per the learned counsel, the appellant gave ample explanation for the discrepancies appearing in the police documents regarding the name of the person who was driving the tempo at the relevant time. He submits that the appellant gave positive evidence before the Tribunal to the effect that the tempo was being driven by Ramdev Singh at the time of accident. Ramdev Singh, the non claimant himself appeared in the evidence and admitted that he was driving the tempo when the accident happened. Thus, he submits that the findings recorded by the

Tribunal for rejecting the claim are perverse and the impugned judgment deserves to be set aside.

5. Per contra Mr. R.K. Singhal and Mr. Vishal Singhal, learned counsel appearing for the respondent Insurance Company urged that the Tribunal after making a just and proper appreciation of evidence held that the tempo was being driven by the appellant himself when the accident occurred. It was urged that the appellant filed the claim application with a grossly false assertion that he was travelling from the Jaipur to Churu in the night intervening 29.11.95 and 30.11.95 when the accident took place. They submitted that N.A.W. 3 Babulal Banshiwal stated that Ramjilal was present in the Government Sr. Secondary School, Khatra (Churu) till 4.30 in the evening of 29. 11.95 and he proved Ex.-47 the Attendance Certificate of Gopi Ram and Ramji Lal to establish this fact. Thus, as per them, the claim of the appellant that he was coming back from Jaipur during the night intervening 29.11.1995 and 30.11.1995 is prima facie false. They further submitted that the appellant in his own testimony did not controvert the facts mentioned in his own Parcha Bayan Ex P-48 wherein it is recorded that the appellant himself was driving the tempo at the time of the accident. They thus urged that no interference is called for in the well reasoned judgment of the Tribunal rejecting the appellant's claim

6. I have heard learned counsel for the parties and perused the impugned judgment and the record.

7. The most significant document available on record is Ex.- 48 the Parcha Bayan of the appellant himself which was recorded by a police officer while he was admitted at the Dhanuka Hospital, Fatehpur on 30.11.1995. In this statement the appellant unambiguously stated that he had purchased a new three wheeler and along with his friends was proceeding from Salasar Balaji to Churu. He further stated that he was driving the tempo and when they reached Fatehpur, while trying to avoid the truck of the tree lying on the road, the three wheeler over-turned. It appears that the appellant who is a government: servant was aware that the Parcha Bayan could be used against him in the claim application, and therefore, he conveniently chose not to file the same along with the claim petition. Be that as it may the Roznamcha Entry Ex. 1 was proved by the appellant in his testimony. In this entry, there is a reference of the Parcha Bayan being recorded. In cross examination, the appellant admitted to have given the Parcha Bayan. The claimant appellant also stated that the two witnesses Jaypal and Manoj were also travelling with him in the tempo but both were not examined by the appellant at the trial. Both of them are signatories to the Parcha Bayan. The evidence of Ramdev Singh, N.A.W. 4 the owner of the vehicle is of no avail to the appellant because Ramdev Singh is none other than the appellant's real brother and had all the reasons to give a statement corroborating the facts set out in the claim application so that the Insurance Company could be made liable. Had the appellant disclosed the fact, that he was driving the three wheeler, then the claim would have been thrown out of the basis of his own rash

and negligent driving and for non coverage. This obviously was the reason for substituting the name of the driver in the claim application.

8. In view of the above discussion, this Court is of the opinion that the appellant's claim application was rightly rejected by the Tribunal as it was based on a total falsehood. The judgment under appeal cannot be said to unjust illegal or suffering from any perversity so as to call for any interference in this appeal. Accordingly, the appeal being devoid of any merit is rejected. No costs.