
(2008) 03 DEL CK 0211
In the Delhi High Court
Case No : FAO No. 54 of 2001

Smt. Dharamwati and Others

APPELLANT

Vs

Haryana Roadways and Others

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2008) 03 DEL CK 0211

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : R.S. Nirwal, for the Appellant; Manjit Singh, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the impugned order dated 22.11.2000 of the learned Motor Accident Claims Tribunal. The facts in brief inter alia are that on 10.01.1995 at about 10:05am, Shri Tulsi Ram was going on his bicycle to his office when all of a sudden a bus bearing registration No. HNC 811 of Haryana Roadways came from Wazirabad side and hit him from back and right side of the cycle from behind, as a result, he fell down on the road, sustained head injury and died on the spot. An F.I.R. No. 11/95 was immediately lodged in Civil Lines Police Station u/s 279/304-A IPC.

2. Counsel for the appellant states that the claim petition filed by the appellant was dismissed only on the ground that the appellant has failed to prove issue No. 1. Counsel for the appellant further contends that the appellant had placed on record number of documents including copy of the FIR, charge sheet, copy of the medical expenses, post mortem report, seizure memo of the bus and besides that the appellant has also produced PW-3 who was an eye witness of the accident. Counsel further contends that disbelieving the said documents of the criminal court as well as deposition given by the eye witness, the Tribunal has dismissed the claim petition only on the ground that the appellant has failed to prove negligence on the part of the driver of the offending vehicle. Counsel for the appellant has also invited my attention to the order passed by the learned

Metropolitan Magistrate in criminal case arising out of the said FIR 11/95, u/s 279/304-A IPC to show that the driver of the offending vehicle has been convicted for a period of one years rigorous imprisonment besides fine of Rs. 5,000/-.

3. In the backdrop of the aforesaid facts counsel for the appellant says that the matter may be sent back to the Tribunal so that the appellant is able to place on record the findings given by the criminal court in the said criminal case arising out of the said accident including the sentence passed by the concerned Magistrate.

4. Counsel for the respondent No. 1 states that he has no objection if the matter is remitted back to the Tribunal. He, however, states that fresh opportunity may also be afforded to the respondent No. 1 to place on record any additional documents or to produce any further evidence on issue No. 1. The impugned judgment was passed vide order dated 22.11.2000 against which the present appeal was preferred by the appellant on 18.1.2001. Perusal of the record also shows that the claim petition filed by the appellant was dismissed by the learned Tribunal solely on the ground that the appellant has failed to prove rash and negligent driving on the part of the driver of the offending vehicle, although, the appellant had proved various documents including copy of the FIR, charge sheet and site plan etc. In any event of the matter the driver of the offending vehicle has been awarded punishment by the concerned Magistrate for a period of one year after he was found involved in causing the said accident due to rash and negligent driving. The said conviction of the driver, no doubt, is an important circumstance to be brought to the notice of the Tribunal, therefore, the matter is remitted back to the Tribunal for fresh consideration on the issue No. 1. Since the matter is being remitted back to the Tribunal, therefore, I would refrain from expressing any opinion on the merits of the case. Both the parties shall be entitled to lead fresh evidence on the said issue.

5. The parties are directed to appear before the Tribunal on 27.3.2008.

6. With these directions, the appeal stands disposed of.