
(2012) 10 DEL CK 0071
In the Delhi High Court
Case No : FAO 425 of 2000

Smt. Madhu and Others

APPELLANT

Vs

Sh. Kuldeep and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Evidence Act, 1872 — Section 114, 45, 47, 61, 62

Citation : (2013) 133 DRJ 90 : (2013) 1 ILR Delhi 419 : (2013) 169 PLR 6

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : J.S. Kanwar, for the Appellant; Pankaj Seth, for R-3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellants who are the legal representatives of deceased Tara Chand impugn a judgment dated 14.07.2000 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 1,76,056/- was awarded in favour of the Appellants and the owner and the driver were made liable to pay the compensation. The Insurance Company was exonerated on the ground that the willful breach of the policy on the part of insured was proved as the driver possessed a fake licence. The Appellants dispute the findings on quantum of compensation as also on the liability.

2. In the absence of any Appeal by the owner, driver or the Insurance Company, the finding on negligence has attained finality.

3. During evidence, it was established that the deceased was working as a Conductor in DTC and was getting a salary of Rs. 1783/- including cycle allowance and washing allowance of Rs. 60/-. Deceased Tara Chand was in permanent employment of a Public Sector Undertaking and was aged 32 years at the time of the accident. The Appellants were entitled to an addition of 50% towards future prospects in the income.

4. There were five dependents including the deceased's parents who died during the pendency of the Appeal. Even if, father of Tara Chand was not dependent there were four other dependents and thus deduction of one-fourth was required to be made as against one-third made by the Claims Tribunal. The loss of dependency thus comes to Rs. 3,72,168/- ($1723/- + 50\% \times \frac{3}{4} \times 12 \times 16$).

5. Keeping in view the fact that this accident took place in the year 1990, I would make a provision of Rs. 15,000/- towards loss of love and affection and Rs. 5,000/- each towards loss to estate, loss of consortium and funeral expenses. The overall compensation thus comes to Rs. 4,02,168/- as against award of Rs. 1,76,056/- awarded by the Claims Tribunal.

LIABILITY

6. On liability, the Claims Tribunal referred to the testimony of RW-1 H.C. Mahajan who produced the report Ex. R-1 from the office of Regional Transport Authority Cuttack to hold that the driving licence No. K/5724/CTK/82 possessed by the driver was fake as the said licence had not been issued by the said Transport Authority.

7. Learned counsel for the Appellant urges that the report Ex. R-1 was not legally proved and thus, the same could not be taken into account by the Claims Tribunal.

8. Even if, it is assumed that Ex. R-1 is a public document, it was required to be proved in accordance with the provisions of Indian Evidence Act. No witness was summoned from the Transport Authority, Cuttack to prove report Ex. R-1. Nobody identified signature of the concerned officer on Ex. R-1. RW-1 H.C. Mahajan simply stated that the report Ex. R-1 was obtained from the Cuttack Transport Authority by the Respondent Insurance Company. This was not sufficient to prove the report.

9. Section 67 of the Indian Evidence Act, 1872 (the Evidence Act) lays down the mode of proof of a document, which is extracted hereunder:-

67. Proof of signature and handwriting of person alleged to have signed or written document produced-

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing.

10. Thus, any document including a public document has to be proved as provided u/s 67 of the Evidence Act.

11. The question of proof of a Sanction Order signed by the Sanctioning Authority i.e. Secretary (Medical) Delhi Administration came up before a learned Single Judge of this Court in State Vs. Brij Mohan, where it was held as under:-

(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction (evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by secondary evidence, I need not dwell upon the same in view of the original document having been placed on the record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the handwriting of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act)....

12. The question of proof of a public document came up before Bombay High Court in C.H. Shah Vs. S.S. Malpathak and Others, , where it was held as under:-

4... In all cases of secondary evidence u/s 65 read with Section 63 of the Evidence Act when a copy or an oral account of a document is admitted as secondary evidence, the execution of the original is not required to be proved but if the original itself is sought to be tendered it must be duly proved and there is no reason for applying a different rule to public documents. Secondly, in the case of a certified copy, before a presumption of its genuineness can be raised u/s 79, as laid down by the Supreme Court in Bhinka's case already referred to above it

must be shown that the certified copy was executed substantially in the form and in the manner provided by law. There would, therefore, be a check or safeguard in so far as the officer certifying it in the manner required by law would have to satisfy himself in regard to the authenticity of the original and in regard to the accuracy of the copy which he certifies to be a true copy thereof. On the other hand if the original of a public document is to be admitted in evidence without proof of its genuineness, there would be no check whatever either by way of scrutiny or examination of that document by an officer or by the Court. The third and perhaps the most important reason, for not accepting Mr. Shah's argument on the point which I am now considering is that neither Section 67 nor Section 68 of the Evidence Act which lay down that the signature and the handwriting on a document must be duly proved do not make any exception in the case of public documents. In view of the provisions of the said section all documents whatever be their nature must be therefore be proved in the manner provided by Section 45, 47 or 73 of the Evidence Act....

5. The only question which remains for consideration is whether a presumption of the genuineness of the original of a public document should be drawn by reason of Illustration (e) to Section 114 of the Evidence Act to the effect that official acts have been regularly performed. It is no doubt true that it has been held by a Division Bench of this Court in the case of East India Trading Co. Vs. Badat and Co., that Section 114 of the Evidence Act is wide enough to permit the Court to raise a presumption not only with regard to oral evidence, but also with regard to documentary evidence. It may be mentioned that the decision of the Division Bench in the said case was reversed on appeal by the Supreme Court by a majority Badat and Co. Vs. East India Trading Co., , but in the judgment of the majority the Supreme Court has not referred to the point mentioned above. Apart from the undesirability of taking a view which would let in any and every document tendered by Government in suits to which it is a party without proof of genuineness, in my opinion, no presumption u/s 114 can be drawn in view of the mandatory and unqualified term of Sections 67 and 68 of the Evidence Act. Section 114 which to put it in popular language, merely empowers the Court to use its commonsense, cannot be used to contravene an express provision of the Act itself. I, therefore, hold that if the original of a public document is sought to be tendered in evidence, it must be proved in the manner required by law....

13. Thus, the report Ex. R-1 alleged to be issued by the Transport Authority, Cuttack could not be admitted into evidence unless signatures thereon is proved by examining a witness.

14. Thus, it cannot be said that the driver of the offending vehicle did not possess a valid driving licence at the time of the accident or that the insured was guilty of breach of the terms of policy. Respondent No. 3 M/s. New India Assurance Company Ltd. cannot avoid its liability to indemnify the insured.

15. In view of above discussion, the compensation stands enhanced by Rs. 2,26,112/- which shall carry interest @ 7.5% per annum from the date of filing

of the Petition till its payment.

16. Respondent No. 3 is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

17. This accident took place 22 years back. Appellants No. 2 and 3 must have attained majority. The compensation awarded shall enure for the benefit of Appellant No. 1.

18. Fifty percent of the compensation shall be held in fixed deposit for a period of two years. Rest shall be released on deposit.

19. The Appeal is allowed in above terms. Pending Applications also stand disposed of.