
(2011) 04 AHC CK 0051

In the Allahabad High Court

Case No : First Appeal From Order No. 22 of 1998

Smt. Sudha Goel and Others

APPELLANT

Vs

Mahendra and Others

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304(A), 337

Citation : (2011) 7 ADJ 827

Hon'ble Judges : Yatindra Singh, J;Y.C. Gupta, J

Bench : Division Bench

Judgement

1. This is an appeal against the order dated 30.9.1997 passed by the Motor Accident Claim Tribunal/ 1st ADJ, Muzaffarnagar (the Tribunal) dismissing the claim petition No. 359 of 1992.

THE FACTS

2. Sri Sushil Chand Goel (the Deceased) was going from Agra to Muzaffarnagar by Car No. DDB-8712 (the Car) on 4.3.1992. At about 1:00 hours, the Car met with an accident with Truck No. UTL-7806 (the Truck) coming from the opposite direction.

3. In this accident, the driver of the Car was killed on the spot and the Deceased was seriously injured. He was taken to the Batra hospital, Delhi where he died on 6.3.1992.

4. Sri Pradeep Kumar Mittal was owner of the Car. He lodged an FIR on 4.3.1992 at about 2:35 hours. It was registered as Case Crime No. 87 of 1992 under Sections 279/337/304A Indian Penal Code Police Station Khatauli, District Muzaffar Nagar.

5. The allegations in the FIR are as follows:

Ishwar Chand was driver of the Car. He had taken the Car to Agra. When he was going further from Agra, it met with an accident with the Truck;

In the accident, the Deceased, a relation of the car owner, received injuries and the car driver died on the spot;

This incident happened at about 1:00 hours on 4.3.1992. This information was received through relations.

A request was made to do the needful.

6. The widow and two major sons of the Deceased (the Claimants) filed the claim petition claiming Rs. 10,76,865 as compensation. The allegations in the claim petition was that the accident took place due to negligence of the Truck driver. In the claim petition the following persons were impleaded:

The driver and owner of the Truck;

The owner of the Car;

The New India Insurance Company Ltd. (the Company) insurer of both the vehicles; and

The two married daughters of the Deceased as proforma Respondents.

7. The Defendants in the claim petition filed written statements:

The Truck driver and the Truck owner alleged that negligence was of the Car driver;

The Car owner alleged that negligence was that of the Truck driver; The company denied their liability to pay the compensation;

The daughters of the Deceased supported the claim petition.

8. The Claimants produced the following witnesses:

Smt. Sudha Goel (PW-1): Widow of the Deceased;

Sri Dinesh Arora (PW-2): Eye-witness of the incident.

9. The Truck driver, Truck owner or Car owner did not produce any witness. However, the Company produced one Rajendra Prasad (DW-1), clerk in the RTO office Dehradun.

10. The Tribunal dismissed the claim petition on the following two considerations:

In the claim petition, it was alleged that the negligence was of the Truck driver, whereas, in the oral evidence it has been stated that the Truck driver as well as Car driver were equally negligent in the accident. The oral evidence is inconsistent with the allegations in the petition. The version of the Claimants cannot be believed.

Dinesh Chand (PW-2) had not seen the occurrence.

11. The Claimants have filed the present appeal against the order dismissing their claim petition.

POINTS FOR DETERMINATION

12. We have heard Sri vivek Kumar Singh, counsel for the Claimants, Sri AK Shukla, counsel for the Company. The following points arise for determination in the case:

- (i) Whether the Tribunal was right in dismissing the claim petition;
- (ii) In case the answer to the aforesaid point is in affirmative, then what compensation should be awarded to the Claimants;
- (iii) Who is liable to pay the compensation.

1st POINT: CLAIM PETITION CANNOT BE DISMISSED

13. In the claim petition it was alleged that the negligence was that of the Truck driver. The Car owner has also filed a written statements in which it was mentioned that the accident took place because of the negligence of the Truck driver. However, the Truck driver and the Truck owner have also filed their written statements. In their written statements, it was mentioned that the accident took place because of the negligence of the Car driver and not because of the negligence of the Truck driver. Thus, there were two competing allegations before the Tribunal,

One was claiming negligence of the Truck driver; and

The other was claiming negligence of the Car driver.

14. If there are two divergent versions then, the Tribunal has to consider the truth on the basis of evidence on record. If on the basis of the evidence the Tribunal comes to the conclusion that it was not a case of negligence of one. driver but both of them contributed to the accident then,

The claim petition cannot be dismissed;

The compensation has to be apportioned between them according to their negligence;

The Car owner cannot say that any prejudice has been caused as there was claim of negligence against the Car driver also.

15. Smt. Sudha Goel (PW-1) is widow of the Deceased. She stated that:

She was not present on the spot. She had alleged in the claim petition that the negligence was of the Truck driver as it was so mentioned in the FIR;

Sri Dinesh Arora had brought the Deceased in the injured condition to the house;

Sri Arora informed her after filing of the Claim petition that both the drivers were negligent.

16. Sri Arora (PW-2) deposed that:

He brought the Deceased to the house in the injured conditions;

He had seen the accident;

The Truck driver as well as the Car driver were equally negligent in the incident.

17. The copy of the FIR dated 4.3.1992 is also on record. This FIR was lodged immediately after the incident at 2:35 hours. In the FIR it is mentioned that the Car owner received information from his relation.

18. The FIR was lodged immediately after the incident. This indicates that everyone came to know about the incident in the night. This can only happen if the family members of the Deceased knew about it. The family members of the Deceased must have been informed by some one.

19. Smt. Sudha Goel (PW-1) stated that she was informed by Sri Arora (PW-2) who had brought the injured body of the Deceased. Sri Arora (PW-2) stated that he had seen the incident and brought the Deceased in the injured condition. There is no reason to disbelieve their statements. It is supported by the FIR.

20. There is another way of considering this aspect.

21. If the statement of Sri Arora is ignored then there is no other evidence to show as to who was negligent. Considering that the incident is admitted, the vehicles were coming from opposite direction, then the presumption would be that both the drivers were equally negligent unless proved otherwise. It was for the Car owner or the driver and owner of the Truck to prove otherwise. This has not been done. In view of this also, both the drivers were equally negligent.

22. In our opinion:

The Tribunal committed illegality in dismissing the claim petition;

The Car driver and the Truck driver were equally negligent.

2nd POINT: ENTITLED TO COMPENSATION

23. The oral evidence has come that the injured was taken to the Batra hospital. There is bill of Rs. 6365 of the Batra Hospital and Medical Research Centre. It shows that Rs. 2000 was paid and Rs. 4365 was to be collected. There is no evidence that the remaining amount was paid. Thus medical expenses are taken to Rs. 2000.

24. Smt. Sudha Goel (PW-1) deposed that the Deceased was aged about 59 years. There is no cross-examination on this point. In view of this, it would be appropriate to take his age as 59 years. Thus, the multiplier of 8 would be applicable.

25. Smt. Sudh Goel (PW-1) deposed that her husband was a tax payer and was earning Rs. 4000 per month.

26. An order of the Income Tax Officer in respect to assessment year 1991-92 is

also on record. It indicates that the income tax return was filed on 26.2.1992 that is prior to the date of the incident and in this return, the income of the Deceased was assessed to Rs. 44,680. Income tax return of only one year has been filed. In absence of income tax returns of others year, this amount cannot be taken to be final one and even this is less than Rs. 4000/- per month.

27. Considering the circumstances of the case, we are of the opinion that the average income of the Deceased was Rs. 3000 per month or Rs. 36000 per year. If 1/3rd deduction for personal expenses, then the total family dependency would be Rs. 24000 x 8 = Rs. 1,92,000.

28. Apart from above, the widow would be entitled to Rs. 5000 for loss of consortium, Rs. 2000 for funeral expenses, Rs. 2500 for loss of estate and Rs. 2000 for medical expenses: total Rs. 1,192,000 + 5000 + 2000 + 2500 + 2000 = Rs. 2,03,500. The claimants are also entitled to 6% interest on the same from the date of the application.

29. We have already held in point No. 1 that the drivers of the Truck and the Car were equally negligent. Thus, the Car owner and Truck owner are liable to pay half of the amount. In case, the liability was insured, then they would be indemnified by the Company. This will be considered in the next point.

3rd POINT: LIABILITY TO PAY

30. The Truck was insured for third party. The Deceased was a third party so far as the Truck was concerned and as such the Company would be liable to indemnify the compensation to be paid by the Truck owner and the company should pay the liability of the driver and owner of the Truck.

31. The counsel for the Company submits that:

The driving licence of the Truck driver was forged;

This is violation of the policy;

The Company is not liable to indemnify the Truck owner.

32. Sri Mahendra son of Kishal Lai was the Truck driver. His driving licence with number M13964 issued by RTO Office, Dehradun was filed. It is only for LMV.

33. Apart from above, the Company has examined Sri Rajendra Prasad (DW-1). He was the clerk in the RTO office, Dehradun. He had brought the original register. After looking in the original register, he stated that no licence to Mahendra was issued from his office and the driving licence No. M13964 is in the name of Smt. Ranjana. In view of this, it cannot be said that the driving licence of the Truck driver was valid.

34. The Truck was insured for the third party. The driving licence of the Truck driver was not valid. Considering the circumstances, compensation to be paid by owner and driver of the Truck will be paid by the Company. However, it will have right to recover the same from the Truck owner.

35. The remaining half of the compensation is to be paid by the Car owner. The cover note of the insurance policy of the Car is on the record. It does not indicate whether any premium for the passenger in the Car was paid or not. In view of this, we clarify that the Claimant will be entitled to recover the remaining half of the compensation from the Car owner. The Car owner may be indemnified by the Company only if the premium for the passengers in the Car was paid.

36. The claim petition has been filed by three persons namely, widow and two sons. Even at the time of filing the claim petition, the sons were major. There is no evidence that they were dependent on the Deceased. In view of this, Smt. Sudha Goel (Appellant-1) would be entitled to receive the entire compensation.

CONCLUSIONS

37. Our conclusions are as follows:

- (a) The Tribunal committed illegality in dismissing the claim petition;
- (b) The drivers of the Truck and the Car were equally negligent;
- (c) The Claimants are entitled to compensation of Rs. 2,03,500 alongwith the 6% interest from the date of filing the application;
- (d) The driver and owner of the Truck are jointly and severally liable to pay half of the amount namely Rs. 1,01,750 alongwith interest. This amount will be paid by the Company and it may recover it from the Truck owner as the driver did not have valid licence;
- (e) The Car owner is liable to pay the remaining half of the compensation namely Rs. 1,01,750 alongwith interest. The Claimant may recover it from the Car owner;
- (f) The Car owner may be indemnified by the Company only if the premium for the passengers in the Car was paid;
- (g) Smt. Sudha Goel (Appellant-1) is entitled to receive the entire compensation.

38. In view of our conclusions, the appeal is partly allowed.