

(2008) 05 DEL CK 0050

In the Delhi High Court

Case No : MAC. APP. No. 504 of 2007 and CM No. 1584 of 2008

Smt. Sudha Padmanabhan and Others

APPELLANT

Vs

Karam Singh and Others

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 169
Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 05 DEL CK 0050

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Pankaj Seth, for the Respondent

Judgement

Kailash Gambhir, J.—By way of the present appeal the appellants seek to challenge the impugned Award dated 7.5.2007 whereby the claim petition filed by the appellants was dismissed by the Tribunal. To deal with the contention raised by the parties it would be appropriate to give brief summary of the present case.

On 25.12.2004 at about 11:45 am, Shri Padmanabhan was going on the motor cycle bearing registration No. KA-02-9759 towards Link Road, Pusa, Delhi to his relative's home. Suddenly, a Tata Indica Taxi bearing registration No. HR-38-FT-2319, being driven by Shri Karan Singh at a very high speed and in a very rash and negligent manner hit the motor cycle as a result of which the deceased Shri Padmanabhan and the pillion rider, a woman, namely, Ms. Vijaya fell down on the road and due to forceful impact they sustained severe injuries on their head and other parts of their bodies. Shri Padmanabhan and Ms. Vijaya were taken to Sir Ganga Ram Hospital where Shri Padmanabhan was medically examined by the medical officer vide MLC NO. 1991/2004 and he remained in the hospital for further treatment. He however died on 27.12.2004 due to the fatal injuries suffered in the said accident.

2. Mr. R.K. Saini, counsel for the appellants contended that the order passed by

the Tribunal is not only illegal but perverse as the Tribunal has failed to appreciate that the appellants had taken due care in summoning the eye witness so as to establish factum of negligence on the part of the driver of the offending vehicle. The contention of counsel for the appellants is that the appellants were diligent enough to take all steps as were expected of them and if there was any fault on the part of the Tribunal to take all permissible steps as provided under law to enforce the attendance of a witness, the appellants cannot be made to suffer. To strengthen his arguments further, the counsel contended, that Ms. Urmila Chandel was the eye witness at whose instance the FIR was registered by the concerned police station and whose statement was also recorded u/s 161 of the Criminal Procedure Code and to summon her required steps were taken by the appellant, but she had failed to appear despite having been served. Counsel also invited my attention to the application submitted on behalf of the said witness before the Trial Court wherein request for seeking exemption from her personal appearance was made on the ground of her suffering from back pain. Even in the list of witnesses filed by the appellants/petitioners the name of the said witness was duly mentioned. Counsel thus contended that the Tribunal has not taken steps against the said witness u/s 169 so as to enforce her attendance and for not taking such steps by the Tribunal, the case of the compensation filed by the appellants could not have been dismissed by the Tribunal.

3. Per contra, Mr. Pankaj Seth counsel appearing for the respondent insurance company vehemently refuted the said submissions of the counsel for the appellants. Mr. Seth contended that the appellants had acquiesced to the said situation and are, Therefore, estopped to reopen the case at the appellate stage with a view to fill up lacunas and gaps in the evidence. The counsel thus contended that the Tribunal has discussed in great detail the failure on the part of the appellants to prove negligence after placing his reliance on number of judgments including the authoritative pronouncement in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, . Counsel thus contended that after the closure of the evidence of the appellants, the respondent has also led evidence, even written arguments were also filed by the appellants, but nowhere the appellants have agitated the issue of non-summoning of the witness due to the lapse or omission on the part of the Tribunal. Counsel thus contended that the issue cannot be reopened at the appellate stage, when the order passed by the Tribunal has already become final. The counsel further contended that even no separate application has been moved by the appellants to produce additional evidence in the matter and Therefore, also the present appeal filed by the appellant is not maintainable and merits dismissal.

4. I have heard learned Counsel for the parties and have perused the record.

5. On perusal of the record it is manifest that the appellants had diligently pursued the case and made efforts to summon the eye witness Mrs. Urmila Chandel but failed to procure her appearance. An application dated 24.8.2006 was also made to the learned trial court by the counsel for the witness seeking

exemption from personal appearance of the said eye witness as she was unable to appear on the said date for the evidence. Also, the pillion rider Mrs. Vijaya could not be examined by the appellants as they were unaware of her whereabouts at the time when the proceedings were going on before the learned trial court.

6. The Motor Vehicles Act is a beneficial piece of legislation. The victims and the families of the victims of the road accident should not go unredressed is the basic object of this legislation.

7 Once the appellant claimant took adequate steps to summon the eye witness then no blame could have been fastened upon the claimant for not taking steps to examine the eye witness. There cannot be any dispute to the legal position that for maintaining a petition u/s 166 of the M.V. Act, it is incumbent upon the claimants to prove negligence on the part of the driver of the offending vehicle. Proof of negligence is sine qua non for maintaining a petition u/s 166 of the M.V. Act. In the present case, it is apparent that the Tribunal dismissed the claim petition filed by the appellant only on the ground that the claimant/appellant had failed to prove negligence on the part of the driver of the offending vehicle by not examining any eye witness. The case in hand is not the one where no steps were taken by the claimant to summon the eye witness. Perusal of the record reveals that not only steps were taken by the appellant to summon the eye witness but on one of the dates, request was received by the eye witness that she was not in a position to appear before the Court due to her ill health. Now in the separate application moved by the appellants, the appellants have been able to ascertain the whereabouts of another eye witness namely Smt. Vijaya who was a pillion rider on the motor cycle being driven by the deceased. I feel this is a fit case which entitles fresh consideration by the Tribunal.

8. In the backdrop of above discussion, the present case is remanded back to the Tribunal. The Tribunal shall give fresh opportunity to the appellant to summon the eye witness Smt. Urmila as well as said pillion rider Smt. Vijaya, so as to afford an opportunity to the appellant to prove negligence on the part of the driver of the offending vehicle.

9. With these directions, the appeal as well as the application stand disposed of.