

(2011) 05 DEL CK 0305
In the Delhi High Court
Case No : FAO No. 283 of 2000

Surinder Kumar Sehgal and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2011) 4 TAC 532

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Judgement

Reva Khetrapal, J.—This appeal is directed against the judgment dated 29.03.2000 passed by the Motor Accident Claims Tribunal, whereby and whereunder the Claim Petition filed by the Appellants claiming compensation for the death of the deceased - Rajiv Sehgal in a motor vehicular accident was dismissed.

2. At the time of hearing, the Appellants were unrepresented as also the Respondents. This Court, therefore, had no option except to peruse the records of the Motor Accident Claims Tribunal and the appeal paper book. On scrutinizing the aforesaid, the facts of the case emerge as follows: In the night intervening 12/13.06.1993 at about 1:15 a.m., the deceased - Rajiv Sehgal was going from the J.M.C. Factory, Karawal Raod to his house at Shahdara. When he had reached near Gatta Factory Raghunath Temple, Karawal Nagar Raod, his motorcycle bearing No. DBX-7850 dashed against a stationary truck bearing No. DLL-2852. The said truck was standing on the road without any parking lights indicators/reflectors on its back side. Neither any lantern nor red cloth was tied to the truck indicating its presence on the road.

3. The Appellants, who are the legal representatives of the deceased being his father, his mother, his wife and two minor daughters filed a petition u/s 166 read

with Section 140 of the Motor Vehicles Act, 1988 claiming compensation in the sum of Rs. 6,00,000/- for his untimely death. The summons of the claim petition were served on all the Respondents but the owner as well as the driver (the Respondents No. 2 and 3 herein) did not care to contest the petition and were accordingly proceeded ex-parte in default of appearance. The petition was, thus, contested only by the Respondent No. 1-Insurance Company, which emphatically denied its liability to pay compensation.

4. On the issue of rashness and negligence of the driver of the alleged offending truck, the learned Claims Tribunal held that the Appellants had not examined any witness and so it had not been proved on record as to how the accident took place, with which vehicle the accident took place and who was responsible for causing the said accident, which resulted in the death of the deceased. The Claims Tribunal, then, held that since the Appellants had failed to prove on record the aforesaid facts, the Appellants were not entitled to any compensation from the Respondents and the petition was, therefore, liable to be dismissed.

5. Aggrieved by the aforesaid findings of the learned Tribunal, the present appeal has been preferred on the ground that the Claims Tribunal had ignored material evidence on record including the evidence by way of affidavit filed on behalf of the claimants alongwith the certified copies of the First Information Report, charge-sheet, the site plan, the inspection report of the vehicle, the MLC report/post mortem report of the deceased. It was also urged that the Claims Tribunal had failed to apply the doctrine of *res ipsa loquitur*, which doctrine clearly applied to the facts of the present case.

6. Having scrutinized the documentary evidence on record, I am of the view that the Claims Tribunal was not justified in throwing out the petition on the ground that the Appellant had failed to establish that the Respondent No. 2 - driver was guilty of rashness and negligence. The Claims Tribunal lost sight of the fact that a criminal case under Sections 279/304-A IPC had been registered against the Respondent No. 2/driver in which case a charge-sheet had been filed against him charging him for offences punishable under the aforesaid sections. The Claims Tribunal also lost sight of the fact that the notice of the filing of the Claim Petition was duly served on the Respondent No. 2 - driver and the Respondent No. 3 - owner, but they did not care to appear in order to put in their defence and to rebut the allegations of rash and negligent parking of the truck in the middle of the night which, owing to the fact that there were no indicators or reflectors to show that the truck was stationary on the road, led to the accident, resulting in the death of the deceased. The learned Claims Tribunal also completely ignored the site plan and the mechanical inspection report, which clearly show the manner in which the motorcycle of the deceased had rammed into the truck standing on the road and the damage caused to the said motorcycle thereby. All the aforesaid documents were proved on record by the widow of the deceased, which conclusively show that doctrine of *res ipsa loquitur* was attracted to the facts of the present case.

7. Even otherwise, it is a well known fact that direct evidence of negligence is not always available particularly in accident cases and where this is so, the court has to consider the indirect and circumstantial evidence available on record. Negligence in such cases may be inferred by the court from the facts and circumstances of the case. It is also a settled law that it is for the driver of the alleged offending vehicle to examine himself and state on oath as to the manner in which the accident occurred, and for the owner to rebut the presumption of negligence and to prove that he exercised all care and caution to avoid the accident, but it could not be avoided despite the care and caution exercised by him. In case the driver of the alleged offending vehicle keeps away from the witness box, the version of the claimants with regard to the manner in which the accident occurred, as corroborated by the version recorded by the police, must prevail and negligence may be inferred therefrom.

8. It is equally well settled that even assuming that the Claims Tribunal had come to the conclusion that the accident was not the outcome of the rash and negligent manner in which the alleged offending truck was parked, the Claims Tribunal, nevertheless, could have awarded compensation to the claimants on the basis of no-fault liability of the driver and the owner of the alleged offending vehicle treating the petition to be one u/s 163-A of the Motor Vehicles Act, 1988. The present case, however, stands on a better footing, in as much as it stands established on record that the death of the bread winner of the Appellants was the outcome of the negligence on the part of the driver of the offending vehicle.

9. For all the aforesaid reasons, the findings of the Claims Tribunal on issue No. 1 cannot be sustained and are accordingly set aside. The case is remanded back to the Claims Tribunal for fresh adjudication on the remaining issues after considering the evidence on record. In view of the fact that the accident occurred as far back as on 12/13.06.1993, and a period of 18 years has elapsed from the date of the institution of the petition, the Claims Tribunal is requested to dispose of the Claim Petition as expeditiously as possible after issuance of notice to all concerned.

10. The appeal stands disposed of accordingly. Records be sent back to the Claims Tribunal forthwith.