
(2001) 07 PAT CK 0086

In the Patna High Court

Case No : A.F.O.O. No"s. 79, 80 and 81 of 1995

Vijay Laxmi Devi and Others

APPELLANT

Vs

Ram Naresh and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Citation : (2003) ACJ 1140 : (2001) 49 BLJR 1684 : (2001) 3 PLJR 643

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Bibhuti Pandey, Ashok Kumar Jha, Vivekanand Kumar and Abhey Kumar, for the Appellant; Shashi Bhushan Prasad and Purushottam Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—These three miscellaneous appeals were heard analogous and this judgment governs the three appeals.

2. In a nutshell, the relevant facts are that three Claim Case Nos. 23/8, 22/7 and 21/6 of the 1978/1993 were filed by the descendants of deceased one Satyanand Kumar who died in accident while traveling in bus No. BRC 22 which met with an accident on 11.3.1978 near Kalyanpur Block. The aforesaid bus was carrying passengers from Patna to Darbhanga. It fell into a ditch near Kalyanpur Block and allegedly Satyanand Kumar died and his son and daughter-in-law also received injuries. Three separate claim petitions were filed by descendents of the deceased and the injured persons themselves filed cases. Upon evidence led by all the claimants in all the three claim cases the Tribunal dismissed the claims of the appellants on the ground, inter alia, that it was not proved that Satyanand Kumar died in the accident caused by the aforementioned bus and that his son and daughter-in-law of the deceased received injuries on account of the alleged accident.

3. It was submitted before me by the appellants lawyer that in spite of the fact

that owner of the vehicle had admitted the accident in his written statement. Learned Tribunal passed the impugned judgment on the ground that post-mortem was not done and that the injured persons had failed to produce injury reports. So, the impugned judgment passed by the Tribunal was unjustified when the accident was admitted by owner of the vehicle.

4. On perusal of the judgment of the Tribunal passed in all the claim cases, it transpires that the Tribunal held that only relations of the deceased and the injured persons were examined. Some of the witnesses were hearsay because they had seen the injured persons and the deceased in the hospital. Of course, one witness who claimed himself to be an eyewitness failed to give satisfactory explanation regarding proper occasion for him to be present at Kalyanpur Chowk where the alleged accident took place. The learned Tribunal also held that since the post-mortem report of the deceased was not produced and the F.I.R. and fardbayan or any other paper regarding criminal case was not exhibited, it was difficult to come to the conclusion that the deceased died on account of the accident, as alleged. The Tribunal also held that admittedly according to the evidence of the injured persons they were carried to Samastipur Hospital and also to the Darbhanga Medical College Hospital, but none of the doctors of the aforesaid hospitals was examined nor any medical certificate was produced to support the fact that the injured persons were treated in the aforesaid hospitals. Of course, a certificate from a doctor, P.M.C.H., Patna and a prescription were produced but the alleged accident which took place on 11.3.1978 and the certificates were from Patna doctor issued on 2.4.1993. So, Claims Tribunal doubted the genuineness of the certificate. Under these circumstances, claims of the three claim cases were not accepted and dismissed.

5. It was submitted before me that when the accident was not denied, the court had to pass an order of compensation without going into the fact whether there was any negligence on the part of the driver of the vehicle concerned. However, I am of the opinion that it had to be proved by the applicants that Satyanand Kumar, of course, died on account of or from the impact of accident even assuming for the sake of argument that the alleged accident took place. But, it had to be proved by evidence on record that, of course, Satyanand Kumar died from the impact of the accident. Admittedly, Satyanand Kumar was carried to the hospital of Samastipur and the doctor declared him dead the moment he reached there. So, at least the doctor's certificate regarding his death or examination of the doctor was necessary to prove that, of course, Satyanand Kumar died from the impact of the accident or on account of the injuries he sustained in the accident. Postmortem should also have been done in such cases. In this connection, it was submitted that since the deceased was Chairman of the Bar Council of Patna at the relevant time, there was a request to the District Magistrate to direct the police not to conduct post-mortem examination. In this connection, neither any documentary evidence nor oral evidence was adduced. If any request was made to the District Magistrate in writing, that request should have been brought on the record. If any oral request was made, the person who

had made this request should have been examined. Even assuming for the sake of argument that post-mortem was not done under the request of the advocates, the doctor who declared the deceased dead should have been examined to support the fact that Satyanand Kumar, of course, died on account of the accident. So, there were clear latches on the part of applicants to prove by conclusive evidence that Satyanand Kumar died in the alleged accident.

6. So far as the claim of the injured persons was concerned, it was to be proved that they had sustained particular injuries either causing permanent impairment of any limb, or any limb of the injured was fractured or they had sustained such injuries and they had spent so much amount towards their treatment. Admittedly, the claimants failed to examine the doctor from Samastipur or Darbhanga where they were earlier treated and they also failed to produce any paper regarding the treatment and the expenses made on their treatment. The certificate from the Patna doctor was not sufficient to prove their claim for the injuries which they sustained. Learned Tribunal, therefore, dismissed the claims of all the claimants in all the three claim cases in view of the aforesaid circumstances.

7. When a claim case is dismissed on account of insufficient evidence, I do not think that the appellate court can allow the compensation claimed simply on assumption and presumption that the injured persons had sustained injuries in the alleged accident or that their kith and kin died in such an accident. It was submitted before me that the record of the criminal case was also called for and the tickets of the bus were also produced, but I do not see on perusal of the record of the cases that either tickets or papers regarding criminal case were exhibited. In this appeal, there was also no prayer by way of additional evidence to admit those tickets and papers regarding criminal case. So, this court cannot pass an award on the basis of presumption and assumption and take any notice of the fact beyond the record.

8. In the result, I do not see plausible reason to disagree with the findings of the Tribunal. Hence, these miscellaneous appeals are dismissed. However, there shall be no order as to costs of these appeals.