(2018)1 SCeJ 338

SUPREME COURT OF INDIA

Civil Appellate Jurisdiction

Present: CJI, Dipak Misra, Justice A.M. Khanwilkar, Justice Dr. D.Y. Chandrachud.

ARCHIT SAINI And Anr.- Appellants,

Versus

THE ORIENTAL INSURANCE COMPANY LTD. And Ors. – Respondents.

Civil Appeal Nos.73007309 of 2016

9th February, 2018

(i) Motor Vehicles Act, 1988 (59 of 1988), Section 166 - One side of the Road was closed due to construction work - The road was about 88 ft. wide i.e. 44 ft. on each side with a divider in between - Offending Gas Tanker standing parked in middle of the road, without any indicators or parking lights - Maruti Car struck against the back of the Gas Tanker as the driver of car could not spot the parked tanker due to flash-lights of the oncoming traffic from front side - Tribunal held driver of the car was him-self not negligent in causing the accident and that the accident has been caused due to sole negligence of the driver of the offending stationed truck in the busy road - High Court overturned the finding of fact recorded by the Tribunal and opined that it was a case of 50% contributory negligence as the tanker/offending vehicle was visible from a distance of 70 ft. - Approach of the High Court in reversing the well considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced - Said finding of the High Court set aside.

(ii) Practice and Procedure - First appeal - Approach of the High Court in reversing the conclusion arrived at by the Tribunal has been very casual, if not cryptic and per-verse - Indeed, the appeal before the High Court is required to be decided on fact and law - That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal - As is evident from the analysis done by the Tribunal, it is a well considered opinion and a plausible view - The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not

supported by the evidence on record - It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts - The Tribunal applied the correct test in the analysis of the evidence before it – Motor Vehicles Act, 1988 (59 of 1988), Section 166. [Para 8]

(iii) Motor Vehicles Act, 1988 (59 of 1988) - Nature of poof - It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts – Held, Tribunal applied the correct test in the analysis of the evidence before it.

[Para 8]

Held,

Tribunal relying on *Lekhu Singh and other v. Udey Singh and others*, (2007-4)148 P.L.R. 507 held that while considering a claim petition, the Tribunal is required to hold an enquiry and act not as criminal court so as to find whether the claimants have established the occurrence beyond shadow of any reasonable doubt - In the enquiry, if there is prima facie evidence of the occurrence there is no reason to disbelieve such evidence - The statements coupled with the facts of registration of FIR and trial of the accused in a criminal court are sufficient to arrive at a conclusion that the accident has taken place. Likewise, in *Kusum Lata v. Satbir*, (2011-2)162 P.L.R. 490 (S.C.) Hon'ble Apex Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. Tribunal applied the correct test in the analysis of the evidence before it.

JUDGMENT

A.M. Khanwilkar, J. – *(9th February, 2018)* **-** These appeals take exception to the judgment and order dated 1st February, 2016 passed by the High Court of Punjab and Haryana at Chandigarh in F.A.O. Nos.1179, 1180, 1181, 1182, 1183, 1318, 1452, 4596, 4597 & 4598 of 2013, whereby the High Court modified the award passed by the Motor Accident Claims Tribunal, Yamuna Nagar, Jagadhari, on the finding that it was a case of

"contributory negligence" and resultantly held that the claimants – injured were entitled to only 50% of the total compensation awarded to them including the enhanced compensation.

2. The sole question raised in the present appeals is about the justness and tenability of the approach of the High Court in reversing the finding of fact recorded by the Tribunal on the factum that the motor accident which occurred on 15th December, 2011 at about 10.30 P.M. was due to parking of the offending vehicle bearing No.HR02AF8590 (Gas Tanker) in the middle of the road in a negligent manner.

3. In the petition for compensation filed before the Motor Accident Claims Tribunal (for short, "the Tribunal"), it was alleged that the accident was caused due to parking of the offending Gas Tanker in the middle of the road without any indicator or parking lights. The claimant examined the eye witness Sohan Lal (PW7) who, in his affidavit, gave an account of the cause of accident in the following words:

> "… That on 15.12.2011 at about 10.30 P.M. I along with P.H.G. Ajit Singh was present near Sanjha Chulha Dhaba, on the National Highway, (which leads to Jammu) in the area of Village Ajijpur, P.S. Sujanpur. At that time all the traffic was diverted on the Eastern side of the road, as the Western side of road was closed due to construction work. In meantime, a Maruti Car No.HR 02K/0448 came from Jammu side (Madhopur side) and struck against the back of the Gas Tanker *as the driver of car could not spot the parked tanker due to flashlights of the oncoming traffic from front side. Then we rushed towards the spot of accident, and noticed that the said tanker was standing parked in middle of the road, without any indicators or parking lights.* Due to the accident the car was damaged extensively. The driver of the Car and a lady sitting by his side, died at the spot. Two children, who were on the rear seat of car were also injured." (emphasis supplied)

4. The said witness was cross- examined by the respondents. The relevant portion of his cross-examination reads thus:

> "…We were standing on Dhaba on duty with our motorcycle. The truck was standing just opposite the dhaba on the other side of the road. I was able to see the truck at that time. There was no fog at that time. There was lights on the dhaba and the truck was visible to me due to light of dhaba. I was standing at the

distance about 70 ft. from the truck because there was road between me and the truck. I have heard the voice/sound caused by the accident only then I noticed at the car struck against the truck. I have not seen the car before the accident, and only seen after the accident. I reached the spot after hearing the sound of accident. I cannot tell the speed of the car because I have not seen the car. The road is about 88 ft. wide i.e. 44 ft. on each side with a divider in between. The left portion of the truck was just on the edge of the road towards the kucha portion."

5. The respondents had opposed the claim petition and denied their liability but did not lead any evidence on the relevant issue to dispel the relevant fact. The Tribunal after analysing the evidence, including the Site Map (Ext.P45) produced on record along with chargesheet filed against the driver of the Gas Tanker and the arguments of the respondents, answered issue No.1 against the respondents in the following words:

"21. Our own Hon'ble High Court in a case captioned *Lekhu Singh and other v. Udey Singh and others*, (2007-4)148 P.L.R. 507 held that while considering a claim petition, the Tribunal is required to hold an enquiry and act not as criminal court so as to find whether the claimants have established the occurrence beyond shadow of any reasonable doubt. In the enquiry, if there is prima facie evidence of the occurrence there is no reason to disbelieve such evidence. The statements coupled with the facts of registration of FIR and trial of the accused in a criminal court are sufficient to arrive at a conclusion that the accident has taken place. Likewise, in *Kusum Lata v. Satbir*, (2011-2)162 P.L.R. 490 (S.C.) Hon'ble Apex Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

22. After considering the submissions made by both the parties, I find that PW7 Sohan Lal eyewitness to the occurrence has specifically stated in his affidavit Ex. PW7/A tendered in his evidence that on 15.12.2011 at about 20.30 p.m. he alongwith PHG Ajit Singh was present near Sanjha Chulha Dhaba on the National High

Way leads to Jummu. All the traffic of road was diverted on the eastern side of the road on account of closure of road on western side due to construction work. In the meantime a Maruti car bearing No.HR02K0448 came from Jammu side and struck against the back of Gas Tanker as the driver of the car could not spot the parked tanker due to the flash lights of the oncoming traffic from front side. Then they rushed towards the spot of accident and noticed that the said tanker was standing parked in the middle of the road without any indicators or parking lights.

23.The statement of this witness clearly establishes that this was the sole negligence on the part of the driver of the gas tanker especially when the accident was caused on 15.12.2011 that too at about 10.30 p.m. which is generally time of pitch darkness. In this way, the driver of the car cannot be held in any way negligent in this accident. Moreover, as per Rules 15 of the Road Regulations, 1989 no vehicle is to be parked on busy road.

24. The arguments of learned counsel for respondent that PW7 Sohan Lal has stated in his cross-examination that there was no fog at that time and there were lights on the Dhaba and the truck was visible to him due to light of Dhaba and he was standing at the distance of 70 feet from the truck being road between him and the truck and he noticed at the car when he heard voice/sound caused by the accident so the respondent no.1 is not at all negligent in this accident *but these submissions will not make the car driver to be in any way negligent and cannot give clean chit to the driver of the gas tanker because there is a difference between the visibility of a standing vehicle from a place where the person is standing and by a person who is coming driving the vehicle because due to flash lights of vehicles coming from front side the vehicle coming from opposite side cannot generally spot the standing vehicle in the road that too in nights time when there is neither any indicator or parking lights nor blinking lights nor any other indication given on the back of the stationed vehicle, therefore, the driver of the car cannot be held to be in any way negligent rather it is the sole negligence on the part of the driver of the offending Gas Tanker as held in Ginni Devi and others' case (2008 ACJ 1572), Mohan Lal's case (2007 1 ACC 785 (Allahabad). It is not the case of the respondent that the parking lights of the standing truck were on or there were any other indi-*

cation on the back side of the vehicle standing on the road to enable the coming vehicle to see the standing truck. The other arguments of learned counsel for respondent no.3 that the road was sufficient wide road and that the car driver could have avoided the accident, so the driver of the car was himself negligent in causing the accident cannot be accepted when it has already been held that the accident has been caused due to sole negligence of the driver of the offending stationed truck in the busy road. The proposition of law laid down in *Smt. Harbans Kaur & others's case* (2010-4)160 P.L.R. 422 (P&H) and *T.M. Chayapathi & another's case* (2005 IV ACC 61 (AP) is not disputed at all but these authorities are not helpful to the respondents being not applicable on the facts and circumstances of the present case. Likewise, non-examination of minor children of the age of 14 and 9 years who lost their father and mother in the accident cannot be held to be in any way detrimental to the case of the claimants when eye witness to the occurrence has proved the accident having been caused by the negligence of respondent no.1/driver of the offending vehicle.

25*. Moreover, in Girdhari Lal v. Radhey Sham and others, (1993-2)104 P.L.R. 109, Sudama Devi and others v. Kewal Ram and others, (2008-1)149 P.L.R. 444 and Pazhaniammal and others's case (2012 ACJ 1370) our own Hon'ble High Court has held that 'it is, prima facie safe to conclude in claim cases that the accident has occurred on account of rash or negligent driving of the driver, if the driver is facing the criminal trial on account of rash or negligent driving.'*

26. Moreover, the respondent no.1/driver of the offending vehicle has not appeared in the witness box to deny the accident having been caused by him, therefore, I am inclined to draw an adverse inference against the respondent No.1. In this context, I draw support from a judgment of the Hon'ble Punjab & Haryana High Court reported as Bhagwanti Devi v. Krishan Kumar Sani and others, 1986 ACJ 331. Moreover, the respondent no.1 has also not filed any complaint to higher authorities about his false implication in the criminal case so it cannot be accepted that the respondent no.1 has been falsely implicated in this case.

27. In view of above discussion, it is held that the claimants have proved that the accident has been caused by respondent no.1 by parking the offending vehicle bearing No. HR02AF8590 on the middle of the road in a negligent manner wherein

Vinod Saini and Smt. Mamta Saini have been died and claimants Archit Saini and Gauri Saini have received injuries on their person. Sh. Vinod Saini deceased who was driving ill fated car on that day cannot be held to be negligent in any way. Accordingly, this issue is decided in favour of claimants." (emphasis supplied)

6. When the matter travelled to the High Court by way of appeal for enhancement of compensation, while accepting the claim of the claimants-injured for giving additional compensation, the High Court overturned the finding of fact recorded by the Tribunal in relation to issue No.1 and opined that it was a case of contributory negligence of the driver of the Maruti Car which met with the accident. The High Court answered the said issue in its judgment as can be discerned from paragraphs 14 & 15, which read thus:

"14. So far as the issue of contributory negligence is concerned, it has come in the testimony of Sohan Lal, PW7, that the tanker/offending vehicle was parked without indicator but the same was visible from a distance of 70 ft. Moreover, a perusal of site plan Ex.P 45 reveals that the offending vehicle was not parked in the middle of the road.

15. In view of the statement of PW7 and site plan Ex.P 45, it is proved that the tanker/offending vehicle was visible from a distance of 70 ft. and not parked in the middle of the road. Therefore, in the concerned opinion of this Court, it is a case of contributory negligence."

7. In the present appeals, the moot question is whether the High Court committed manifest error in reversing the well considered decision of the Tribunal on issue No.1 answered against the respondents, instead concluding that it was a case of 50% contributory negligence on the part of the deceased driver of the Maruti Car.

8. After having perused the evidence of PW7, Site Map (Ext. P45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the

view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flash lights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext. P45) reinforces the version of PW7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the Site Plan (Ext. P45) filed along with the chargesheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/ offending vehicle was parked without any indicator or parking lights. The fact that PW7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flash lights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW7 nor has any suggestion been made that no vehicle with flash lights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.

9. Suffice it to observe that the approach of the High Court in reversing the well considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced.

10. Accordingly, we have no hesitation in setting aside the said finding of the High Court. As a result, the appellants would be entitled to the enhanced compensation as determined by the High Court in its entirety without any deduction towards contributory negligence. In other words, we restore the finding of the Tribunal rendered on issue No.1 against the respondents and hold that respondent no.1 negligently parked the Gas

Tanker/offending vehicle in the middle of the road without any indicator or parking lights.

11. Accordingly, we affirm the enhanced compensation payable to the claimants as determined by the High Court in paragraph 13 of the impugned judgment, which reads thus:

> "13. In view of the above, the claimants injured are held entitled to the enhanced compensation of Rs.2,80,000/ [Rs.30,000/ (enhancement towards 'pain and suffering') + Rs.20,000/ (enhancement towards loss of studies) + Rs.10,000/ (enhancement towards special diet) + Rs. 1,90,000/ (enhancement towards 'loss of love and affection') + Rs.30,000/ (enhancement towards cremation and last rites)] as indicated above, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, the claimants-appellants shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal till its realization."

We set aside the direction given by the High Court in paragraph 16 of the impugned judgment regarding deduction of 50% of the total compensation awarded to the claimants towards contributory negligence.

12. The appeals are allowed in the aforementioned terms with no order as to costs.

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