(2018)1 SCeJ 877

SUPREME COURT OF INDIA

Present; CJI Dipak Misra and Justice A.M. Khanwilkar

MOHAR SAI And Anr. – Appellants,

Versus

GAYATRI DEVI And Ors - Respondents.

Civil Appeal No. 8411 of 2015

27 April, 2018

Motor Vehicles Act , 1988 - Evidence - Preponderance of probabilities - The view so taken by the Tribunal, it appears to us, was not only a possible view but also in conformity with the scale to be applied for appreciation of evidence in motor accident cases namely preponderance of probabilities - Nevertheless, the High Court reversed this well considered finding of fact recorded by the Tribunal - The entirety of evidence has not been analysed by the High Court - Besides the oral evidence adduced by the claimants, the Tribunal also took note of the police papers in respect of the Criminal Complaint filed before the Chief Judicial Magistrate, for offence punishable under Sections 279 and 304A of the Indian Penal Code and the statement of the witnesses referred to therein - The High Court, however, selectively relied on the statements of interested witnesses examined on behalf of the appellants - High Court committed manifest error in reversing the finding of fact recorded by the Tribunal by solely relying on the version of interested witnesses examined by the appellants in defence - On the other hand, the analysis of the totality of evidence by the Tribunal is consistent with the principle of preponderance of probabilities – Order of Tribunal upheld.

[Para 11, 12]

(ii) Motor Vehicles Act , 1988 – Courts role of *parens patriae* - Order of High court (reversing order of MACT) set aside though there was no appeal or cross objections by the respondents - In motor accident claim cases, the Court cannot adopt a hyper-technical approach but has to discharge the role of *parens patriae* (Latin term meaning 'parent of his or her country') - This appeal being continuation of the claim petition albeit at the instance of the owner (appellant No.1) /alleged driver of the vehicle (appellant No.2), we consider it appropriate to examine the approach of the High Court in reversing the finding of fact recorded by the Tribunal on the factum of motorcycle being driven by appellant No.2, at the relevant time and also that he had caused the accident due to rash and negligent driving - High Court overturned finding recorded by the Motor Accidents Claims Tribunal, that the motorcycle was driven by appellant No.2 at the relevant time when the accident occurred and, instead, concluded that the motorcycle was, in fact, driven by deceased – On a deeper scrutiny of the materials on record, we are of the opinion that the High Court committed manifest error, an error apparent on the face of the record, in reversing the finding recorded by the Tribunal that the motorcycle was being driven by appellant No.2

and had caused accident due to rash and negligent driving - Respondents (claimants) have neither come up in cross appeal against the reduction of the compensation amount on the finding of contributory negligence nor have they filed any cross objection regarding reversing of the crucial finding of fact by the High Court – We are inclined to do so as it is open to the respondents to support the decree whilst urging that the finding against them recorded by the High Court on the matter in issue ought to have been in their favour as has been held by the Tribunal. [Para 8]

JUDGMENT

A.M. Khanwilkar, J. – *(27 April, 2018)* -

1. This appeal, by special leave, emanates from the judgment and order dated 1st April, 2015 passed by the High Court of Chhattisgarh at Bilaspur in Misc. Appeal (C) No.1100 of 2011, partly allowing the appeal filed by the appellants herein (owner and driver of the offending vehicle) against the award passed by the Motor Accident Claims Tribunal, Koriya, Baikunthpur, Chhatisgarh (hereinafter referred to as "the Tribunal"), in Claim Case No.22/2008 dated 21st September, 2011, on the finding that the deceased was liable for contributory negligence to the extent of 50% and as such, after deducting 50% of the compensation amount, the respondents/claimants would be entitled to a sum of Rs.3,86,500/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization.

2. Briefly stated, the respondents claiming to be the heirs and legal representatives of the deceased Krishna Kumar Sahu alias Tipu Sahu, son of Dashrath Sahu, filed a claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") for compensation, amounting to Rs.20,21,000/- on account of the death of Krishna Kumar Sahu in a motor accident which occurred on 14th November, 2006. Respondent No.1 is the widow of deceased Krishna Kumar Sahu. Respondent Nos.2 to 4 are the minor children of the deceased and respondent Nos. 5 & 6 are the parents of the deceased. They asserted that when Krishna Kumar was in his Pan Shop near the bus stand of Village Kathghor, appellant No.2 Prem Lal Rajawade came to his shop on his motorcycle bearing registration No. CG 16C/5171 with a friend, Narendra Panika, at around 1.00 P.M. and cajoled Krishna Kumar to accompany him to Village Belia. All the three left for Village Belia on the motorcycle. While returning back from Belia, when they reached Khaad Naala, the motorcycle skidded due to high speed as the driver lost control over it. Consequently, all the three persons travelling on the motorcycle were injured. The motorcycle was driven by Prem Lal all along. They were given first aid at Government Hospital, Sonhat and then referred to Charcha Regional Hospital for further treatment. Krishna Kumar died en-route to Charcha Hospital. In this background, the claim petition was filed, which was resisted by the appellants.

3. Admittedly, appellant No.1 is the owner of the offending vehicle and appellant No.2 is the son of appellant No.1 who went along with the deceased on the offending motorcycle on the date of accident. According to the appellants, however, the motorcycle was being driven by Krishna Kumar and not appellant No.2, as alleged, when the accident took place. Appellant

No.2 was sitting in the middle and Narendra Panika was sitting at the back, as pillion riders. Krishna Kumar was driving the motorcycle rashly and at a high speed. He was told to slow down but he did not pay any heed to it and eventually the accident was caused. In other words, the deceased Krishna Kumar was himself responsible for the accident.

4. In light of the competing claims of the parties, the Tribunal framed four issues and finally answered the claim petition in favour of the claimants. The Tribunal accepted the plea of the claimants that the offending vehicle (motorcycle) was driven by Prem Lal (appellant No.2) at the relevant time and had caused the accident due to rash and negligent driving. The Tribunal then determined the quantum of compensation amount on the basis of monthly income of the deceased estimated at Rs.3,000/- and applied multiplier of 15. Besides, the Tribunal awarded lump sum amount of Rs.25,000/- towards funeral expenses, loss of love and affection due to the death of the deceased. The Tribunal determined the compensation amount at Rs.3,85,000/- to be paid with interest at the rate of 7.5% per annum from the date of filing of the claim petition until its realization. The appellants assailed the said decision of the Tribunal by way of First Appeal before the High Court of Chhattisgarh at Bilaspur.

5. The High Court reversed the finding of fact recorded by the Tribunal that the offending vehicle (motorcycle) was driven by Prem Lal (appellant No.2) at the relevant time and instead found that the deceased himself was driving the motorcycle and had caused the accident. On that finding, the High Court proceeded to hold that being a case of contributory negligence, the claimants would be entitled to only 50% of the compensation amount to be determined by it. With regard to the quantum of compensation amount, the High Court opined that the Tribunal failed to provide for addition of 50% to the actual income of the deceased towards future prospects and also deduction of 1/4th of the income, instead of 1/3rd.

Further, the amount awarded towards funeral expenses and loss of consortium for the wife and loss of love and affection towards the children and parents, was enhanced to Rs.50,000/-. On that basis, the High Court opined that the total compensation amount payable would have been Rs.7,73,000/-, but after deduction of 50% of that amount towards contributory negligence, the amount actually payable to the respondents – claimants would work out to Rs.3,86,500/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. This decision is the subject matter of the present appeal at the instance of the appellants (owner/driver of the motorcycle).

6. The foremost contention in this appeal is that the High Court having concluded that appellant No.2 was not driving the motorcycle at the relevant time and applying the exposition in the case of **A. Sridhar Vs. United India Insurance Company Limited and Anr.**, (2011) 14 SCC 719 the claimants at best would be entitled to compensation on 'no fault liability principle' under Section 140 of the Act, for it was a case of accident not because of fault of owner of the vehicle or because of the fault of any other vehicle. It is urged that no liability can be fastened on the appellants for the negligence of the deceased, much less on the pillion riders. It is also urged that the appellants come from a very humble background and are engaged in ordinary agricultural labour work. They will not be in a position to pay any compensation

amount, if awarded. It is also contended that there was no relationship of master and servant, principal/employer and employee between the deceased and the appellants which alone could have been the basis for awarding compensation, much less fasten liability on the appellants to pay such amount on the principle of vicarious liability. It is submitted by the appellants that the High Court's decision of fastening the liability on the appellants of Rs.3,86,500/-, with interest at the rate of 7.5% per annum, deserves to be set aside and the appellants ought to be absolved from any liability. Alternatively, it is submitted that the compensation amount be determined under Section 140 of the Act and not under Section 166 of the Act.

7. Although notice has been served on the respondents, no appearance has been entered on their behalf. As a result, the hearing of this appeal had to proceed ex-parte against them. We have heard Ms. Sumita Hazarika, learned counsel for the appellants, at length.

8. The appellants may be right in contending that in cases where the accident occurs without any fault of the owner of the vehicle or the fault of the other vehicle, the liability to pay compensation, at best, must be determined in terms of Section 140 of the Act as has been held in **A. Sridhar** (supra). It is true that the High Court in the present case has overturned the finding recorded by the Tribunal that the motorcycle was driven by appellant No.2 at the relevant time when the accident occurred and, instead, concluded that the motorcycle was, in fact, driven by deceased Krishna Kumar. In that sense, the accident occurred neither due to the fault of the owner of the vehicle (appellant No.1) who, admittedly, was not present or travelling on the motorcycle at the relevant time nor due to the fault of any other vehicle. However, on a deeper scrutiny of the materials on record, we are of the opinion that the High Court committed manifest error, an error apparent on the face of the record, in reversing the finding recorded by the Tribunal that the motorcycle was being driven by appellant No.2 (son of appellant No.1 – owner of the motorcycle) and had caused accident due to rash and negligent driving. We are conscious of the fact that the respondents – claimants have neither come up in cross appeal against the reduction of the compensation amount on the finding of contributory negligence nor have they filed any cross objection regarding reversing of the crucial finding of fact by the High Court. However, it is well settled that in motor accident claim cases, the Court cannot adopt a hyper-technical approach but has to discharge the role of parens patriae. This appeal being continuation of the claim petition albeit at the instance of the owner (appellant No.1)/alleged driver of the vehicle (appellant No.2), we consider it appropriate to examine the approach of the High Court in reversing the finding of fact recorded by the Tribunal on the factum of motorcycle being driven by Prem Lal (appellant No.2, son of appellant No.1 owner of the motorcycle) at the relevant time and also that he had caused the accident due to rash and negligent driving. We are inclined to do so as it is open to the respondents to support the decree whilst urging that the finding against them recorded by the High Court on the matter in issue ought to have been in their favour as has been held by the Tribunal.

9. The respondents, in support of their claim that the deceased Krishna Kumar travelled

as pillion rider and was sitting in the middle, between the two other persons who were travelling together on the motorcycle, had examined witnesses who spoke about the fact that Prem Lal along with Narendra Panika came to the Pan Shop of deceased Krishna Kumar and cajoled him to accompany them to Village Belia. Krishna Kumar agreed to go with Prem Lal and when he left his Pan shop, the vehicle was being driven by Prem Lal (appellant No.2). The witnesses have also unambiguously mentioned that when they reached Village Belia and left from that Village, Prem Lal was driving the motorcycle and Krishna Kumar was sitting in the middle and Narendra Panika behind him. The witness Jawahar Lal (AW-5), has also stated that while he was going to Sonhat from Baikunthpur in a jeep, he saw Krishna Kumar going with his friends on a motorcycle and sitting in the middle. Few minutes thereafter, the accident occurred. The respondents, through their witnesses, have also established that the motorcycle was owned by appellant No.1 and appellant No.2 used to drive that motorcycle himself. The appellants did not even produce any tittle of evidence, except the bare words of the appellants and their witnesses Narendra Panika (DW-2) and Jai Prakash (DW-3) who are obviously interested witnesses. Taking the entirety of the evidence on record, the Tribunal in paragraphs 17 and 18 of its judgment observed thus:

> "17. Examining the witnesses Gayagtri (AW-1), Rajkumar (AW-2), Sanjay Pratap Singh (AW-3), Bhagwat Prasad (AW-4), Jawahar Lal (AW-5), Sandeep Kuma (AW-6) and the documents exhibited it was found that on 14.11.2006 near the Khad Naala near village Kailashpur motorcycle no.CG 16C/5171 met with an accident, and the riders of the motorcycle Premlal, Narendra Panika, and Krishna Kumar were injured. Krishna Kumar was seriously injured and therefore, he died while being taken to Charcha hospital.
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> 18. From the statement of applicant no.1 Smt. Gayatri Devi and the Criminal Complaint no.39/08 before the Chief Judicial Magistrate, Baikunthpur, prima facie case against Premlal Rajwade under section 279, 304A of IPC has been registered on the basis of the witnesses and documents and the matter is pending before the court. These facts have stood the test of cross-examination."

10. Again, in paragraphs 22-24, the Tribunal negatived the plea of the appellants being far-fetched and accepted the version of the respondents – claimants that the motorcycle at the relevant time was being driven by Prem Lal (appellant No.2) and he had caused the accident due to rash and negligent driving. Paragraphs 22-24 read thus:

> "22. On the basis of the above mentioned statements of the Defendant Premlal (DW-1), Witness Narendra Panika (DW-2), and Jayprakash (DW-3) the claim of applicants that Krishna Kumar died in a motorcycle accident is proved.
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> 23. The defence of the defendants is that on the said date the motorcycle was being driven by deceased Krishna Kumar. Defendant witness Premlal (DW-1), Narendra Kumar (DW-2), and Jayprakash (DW-3) in their chief examination have stated that while going back from Kailashpur the said vehicle was being driven by Krishna Kumar. Krishna Kumar was driving the motorcycle in high speed and negligent manner, due to which he was not able to control the vehicle and accident was caused. Witness Premlal (DW-1) has refuted

the claim of the applicants in his cross examination and has stated that deceased Krishna Kumar knew how to drive all kinds of vehicles. But he has conceded of not having any knowledge whether Krishna Kumar had any driving licence or not. This witness has stated that the deceased had scooter for himself. However, the defendants have not been able to produce any reliable evidence as to the ownership of the said scooter and neither any valid licence to prove that Krishna Kumar had a license to drive to vehicles. Narendra Panika (SW-2) has also not produced any documents relating to the vehicle of the deceased neither relating to the driving license of the deceased. Witness Jayprakash (DW-3) has admitted that he did not see the accident happening. In this situation, the burden of proof is on the defendants to prove that deceased had a valid driving licence and that he was the one who was driving the motorcycle. The defendants have failed to produce any reliable evidence in this regard. The vehicle involved in accident CG-16/C5171 is owned by Mohar Sai and it was regularly driven by Premlal (Defendant no.2), if he or his father (defendant no.2 and 1) had allowed deceased Krishna Kumar, so both of them are definitely liable for the accident, because without finding out whether the deceased had a valid driving license, the defendants allowed him to drive the motorcycle.

24. Therefore, on the basis of the above evidence it is decided that on question no.1 and 2 the applicants have been able to successfully prove against the defendants. On the other had the defendants have not been able to prove their case on question no.2. Therefore, the question no.1 is adjudicated as Yes and question no.2 is adjudicated as No."

11. The view so taken by the Tribunal, it appears to us, was not only a possible view but also in conformity with the scale to be applied for appreciation of evidence in motor accident cases namely preponderance of probabilities. Nevertheless, the High Court reversed this well considered finding of fact recorded by the Tribunal by merely observing thus:

"11. After evaluating the evidence of witnesses, it would reveal that the Applicant had examined the eye witness Sanjay Pratap Singh as A.W.3, but he has stated in cross examination that he has not seen the incident and reached the spot after the accident had happened. Similarly, witness Bhagwat Prasad only says about the fact that before the occurrence of accident, the vehicle was driven by Premlal. Another witness Jawharlal Sahu has stated in his cross examination that he has not seen the incident. Therefore, taking into statements of witnesses alongwith FIR wherein it is stated that at the relevant time, the vehicle was being driven by the deceased himself appears to be more plausible. Ex.D-4 is a document of MLC of two persons, which is an intimation sent by Doctor Ex.D-4 purports that the doctor intimated the police about the injured persons and it contains the statement that 3 persons were travelling in the motorcycle and the driver of the motorcycle had died. This was sent on 14.11.2006 at about 11.45 p.m., that is the date of accident and immediately after the incident happened. Reading it alongwith the statements of pillion riders who were also travelling on the motorcycle would clearly go to show that that at the relevant time, the vehicle was being driven by the deceased Krishna Kumar Rajwade itself.

12. So taking into account the facts which have emerged from evidence and documents

on record, I am of the opinion that the finding of the learned Claims Tribunal that at the relevant time the vehicle was being driven by Premlal Rajwade appears to be not sustainable and is set aside. Accordingly, it is held that deceased was also liable for contributory negligence for the accident."

12. The entirety of evidence has not been analysed by the High Court, including the material evidence of witnesses who had seen Prem Lal (appellant No.2) driving the motorcycle and deceased Krishna Kumar sitting behind him as pillion rider, whilst leaving his Pan shop and when they reached Village Belia and again, when they left that village, including having been seen by Jawahar Lal (AW-5) on the way just before the occurrence of the accident. The High Court has not discarded the version of the claimants' witnesses as untruthful. Besides the oral evidence adduced by the claimants, the Tribunal also took note of the police papers in respect of the Criminal Complaint No.39/08 filed before the Chief Judicial Magistrate, Baikunthpur, for offence punishable under Sections 279 and 304A of the Indian Penal Code and the statement of the witnesses referred to therein. The High Court, however, selectively relied on the statements of interested witnesses examined on behalf of the appellants and Exh. D-4 and Exh. D-5. Exh. D-4 is a document of MLC of Narendra Panika who presumably gave intimation that Krishna Kumar was seriously injured and that he succumbed to injuries before he could be shifted to the hospital. The version given to the doctor by appellant no.2 and Narendra Panika was unilateral and not verified from independent eye witnesses before recording the same. Exh.D-5 was similarly founded on the intimation given by the two injured persons who obviously did not reveal the correct position for reasons best known to them. Notably, the eye witnesses examined by the claimants have neither been discarded as untruthful nor has the High Court found any contradiction in the version given by them. Their version remained unshaken during the cross-examination. As such, the High Court committed manifest error in reversing the finding of fact recorded by the Tribunal by solely relying on the version of interested witnesses examined by the appellants in defence. On the other hand, the analysis of the totality of evidence by the Tribunal is consistent with the principle of preponderance of probabilities.

13. Once this finding of the High Court becomes doubtful, the principal argument of the appellants must fail, in which case the question of applying Section 140 of the Act does not arise. For the same reason, the exposition in the case of **A. Sridhar** (supra), will be of no avail to the appellants. In other words, we find no infirmity in the finding recorded by the Tribunal that the motorcycle was driven by Prem Lal (appellant No.2) at the relevant time and had caused the accident due to rash and negligent driving resulting in injuries to all the three persons travelling on the motorcycle, including the deceased Krishna Kumar who succumbed to the injuries before being admitted in Charcha Hospital. No serious argument has been made about the quantum of compensation determined by the High Court providing for future prospects and deducting 1/4th towards personal expenses, including ap plying the multiplier of 16. Even if any argument in that behalf is available to the appellants, as the amount involved is insignificant and the difference between the quantum determined by the Tribunal and the

quantum determined by the High Court is only marginal (the Tribunal determined Rs.3,85,000/- and the High Court determined Rs.3,86,500/-), we decline to interfere in exercise of our jurisdiction under Article 136 of the Constitution. At the same time, we must clarify that we have not examined the justness of the finding of the High Court regarding contributory negligence against the deceased and providing for deduction of 50% compensation amount therefor. For, the respondents have not assailed that part of the finding of the High Court.

14. Taking overall view of the matter, we have no hesitation in concluding that in the facts and circumstances of the present case, no interference under Article 136 of the Constitution is warranted. Hence, this appeal is dismissed with no order as to costs.

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