Supreme Court of India Kusum & Ors vs Satbir & Ors on 2 March, 2011 Author: Ganguly Bench: G.S. Singhvi, Asok Kumar Ganguly REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2269 OF 2011

(Arising out of Special Leave Petition (C) No.24432/10)

Kusum Lata and others ... Appellant(s)

- Versus -

Satbir and others ... Respondent(s)

J U D G M E N T

GANGULY, J. 1. Leave granted. 2. Heard learned counsel for the claimant, learned counsel for the insurance company and also the learned counsel for respondent nos.1 and 2, the driver and the owner of the offending vehicle. 3. In this case the claim for compensation filed by the appellants was concurrently denied both by the Motor Accident Claims Tribunal (for short, 'the Tribunal') as also by the High Court. 4. The material facts of the case are that on 12th January, 2005 while Surender Kumar, the victim, was going on foot, he was hit by a vehicle from behind as the vehicle was driven rashly and negligently and was also in a high speed. The victim sustained several injuries and was rushed to the hospital and was declared dead. After the said incident the appellants, namely, Kusum Lata, wife of the victim and three of his children, two are minor daughters and one is a minor son, filed a claim petition. 5. When the matter came up before the Tribunal, the Tribunal in its award dated 14.6.2006 framed three issues for adjudication. Of those three issues, since the Tribunal came to a finding against the appellants on the first issue, the other findings of the Tribunal in the second and third issue were, according to Tribunal, of no avail to the appellants. On the first issue the Tribunal came to a finding that the involvement of the offending vehicle being tempo No.HR-34-8010 has not been proved and since on this issue the Tribunal's finding went against the appellants, no compensation was awarded. On an appeal filed against the said award, the High Court by the impugned judgment dated 21.5.2010 also affirmed the finding of the Tribunal. 6. The main reason why both the Tribunal and

the High Court reached their respective findings that vehicle No.HR-34-8010 was not involved in the accident are primarily because of the fact that in the FIR which was lodged by one Ashok Kumar, brother of the victim, neither the number of the vehicle nor the name of the driver was mentioned. 7. Admittedly, the facts were that the brother of the deceased, Ashok Kumar while walking on the road heard some noise and then saw that a white colour tempo had hit his brother and sped away. Immediately, he found that his brother, being seriously injured, was in an urgent need of medical aid and he took him to the hospital. Under such circumstances it may be natural for him not to note the number of the offending vehicle. That may be perfectly consistent with normal human conduct. Therefore, that by itself cannot justify the findings reached by the Tribunal and which have been affirmed by the High Court. In the present case, evidence has come on record from the deposition of one Dheeraj Kumar, who clearly proved the number of the vehicle. The evidence of Dheeraj Kumar is that he was going along with one Ashok Kumar on a scooter to know the condition of one of their relative in Mahendergarh Hospital. As they reached at turning at Mahendergarh road a tempo bearing No. HR-34-8010 of white colour being driven in a rash and negligent manner came from behind and overtook their scooter. Dheeraj Kumar was not driving the scooter. Dheeraj Kumar saw that the tempo hit Surender, the victim, as a result of which he fell down but the tempo did not stop after the accident. However, the evidence of Dheeraj Kumar is that they followed the same and caught the driver. On their asking, the driver disclosed his name as Satbir son of Shri Ram Avtar. Thereafter, they went to Mahendergarh Hospital and on the next day when they were returning, they found police and other persons were present at the spot. Dheeraj Kumar told the name of the driver and gave the number of the tempo to the police. Dheeraj Kumar claims to have seen the incident with his own eyes. When Dheeraj Kumar was cross-examined, he stated that the deceased Surender is not related to him nor was he his neighbour. He was his co-villager. Dheeraj Kumar also told that he knows the driver of the vehicle bearing No. HR-34-8010. He denied all suggestions that he was giving his evidence to help the victim. Both the Tribunal and the High Court have refused to accept the presence of Dheeraj Kumar as his name was not disclosed in the FIR by the brother of the victim. 8. This Court is unable to appreciate the aforesaid approach of the Tribunal and the High Court. This Court is of the opinion that when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Dheeraj did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental strain if the brother of the victim forgot to take down the number of the offending vehicle it was also not unnatural. 9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar.

The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known 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. 10. Reference in this connection may be made to the decision of this Court in Bimla Devi and others v. Himachal Road Transport Corporation and others [(2009) 13 SCC 530], in which the relevant observation on this point has been made and which is very pertinent and is quoted below:- "In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that 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." 11. In respect of the finding reached by the Tribunal on the assessment of compensation, this Court finds that the Tribunal has used the multiplier of 16, even though the age of the deceased has been determined to be 29. We find that the Tribunal erred by applying the multiplier of 16. However, considering the age of the victim, the multiplier of 17 should be applied in view of the decision of this Court in Sarla Verma (Smt) and others v. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, and the chart at page 139. It is not in dispute that in the instant case the claim for compensation has been filed under Section 166 of the Motor Vehicles Act. This Court finds that if the multiplier of 17 is applied then the amount comes to Rs.3,93,428.45 apart from the amount of funeral expenses and the amount granted for loss of consortium. Taking all these together the amount comes to a little more than four lacs of rupees. 12. The Court, however, in exercise of its power under Article 142 and considering the number of claimants, of which three are minor children, is of the opinion that for doing complete justice in the case and by taking a broad and comprehensive view of the matter, an amount of Rs.6 lacs including the amounts of consortium and funeral expenses would meet the ends of justice. The Court, therefore, grants a compensation of Rs.6 lacs considering the fact that the victim was the sole wage earner in the family and he left behind three minor children and a widow. The said amount is to be paid along with interest @ 7% from the date of presentation of the claim petition till the date of actual payment. 13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of National Insurance Company Limited v. Swaran Singh and others reported in (2004) 3 SCC 297. 14. The appeal is, therefore, allowed. The judgments of the Tribunal and the High Court are set aside. The insurance company is to pay the aforesaid amount in the form of a bank draft in the name of appellant no.1 with interest as aforesaid within a period of six weeks from date and deposit the same in the Tribunal. This direction should be strictly complied with by

the Insurance Company. 15. This Court directs the Tribunal to take steps for opening a bank account in the name of the appellant no.1 in a Nationalised Bank and deposit the demand draft in that account. If, however, there is any bank account in the name of the appellant no.1, the demand draft is to be deposited in that bank account. 16. No costs. .....J. (G.S. SINGHVI) .....J. New Delhi (ASOK KUMAR GANGULY) March 02, 2011