

Ravi vs Badrinarayan & Ors on 18 February, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1226, 2011 (4) SCC 693, 2011 AIR SCW 1530, AIR 2011 SC (CRIMINAL) 594, 2011 AAC 739 (SC), 2011 (3) AIR JHAR R 381, 2011 (2) AIR KANT HCR 295, AIR 2011 SC (CIVIL) 673, (2011) 2 ACJ 911, (2011) 2 GUJ LR 1216, (2011) 2 RECCIVR 190, (2011) 1 UC 571, (2011) 2 JCR 73 (SC), (2011) 2 ALL WC 1823, (2011) 2 PUN LR 493, (2011) 3 MAD LW 222, (2011) 3 MPLJ 255, (2011) 1 TAC 867, (2011) 85 ALL LR 471, (2011) 99 ALLINDCAS 1 (SC), (2011) 2 SCALE 618, (2011) 1 WLC(SC)CVL 385, (2011) 1 ACC 704, (2011) 3 CIVLJ 453, (2011) 2 KER LJ 3, (2011) 4 MAD LJ 315, (2011) 4 MAH LJ 514, 2011 (2) SCC (CRI) 751

Author: Deepak Verma

Bench: Deepak Verma, Dalveer Bhandari

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1926 of 2011

[Arising out of S.L.P. (C) No.11974 of 2008]

Ravi

.....Appella

Versus

Badrinarayan & Ors.

.....Respond

J U D G M E N T

Deepak Verma, J.

1. Leave granted.

2. Cruel hands of destiny played havoc with the life of Ravi, then aged 8 years, on account of motor road accident, on 7.10.2001 at about 8.30 AM, when rear side of truck bearing Registration No. RJP - 1008, driven by Respondent No. 1 -

Badrinarayan, owned by Respondent No. 2 - Prahlad Singh and insured with Respondent No. 3 - M/s. National Insurance Company Limited, hit the victim, causing multiple injuries to him. To add to his miseries, his claim petition filed under Section 140 and 166 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as 'M.V. Act') before Motor Accident Claims Tribunal, Jaipur (for short, 'MACT'), registered as Claim Petition No. 865 of 2004, came to be dismissed on 19.9.2007 by C.A. @ S.L.P.(C)No.11974/08 (contd.)

- 2 -

- 2 -

learned Presiding Judge of the said Tribunal, mainly on the ground that formal FIR of the incident was lodged belatedly and Appellant failed to establish that on the fateful day, the said truck was involved in a motor road accident causing injuries to him.

3. An appeal filed before the learned Single Judge of the High Court of Judicature for Rajasthan, Jaipur under Section 173 of the M.V. Act also came to be dismissed on 29.10.2007. Thus, all hopes of, at least, getting some amount of compensation to mitigate the miseries of the victim so as to lead a respectful and decent life had come to a grinding halt. It is under these circumstances, he has preferred the present appeal.

4. The question which arises for our consideration in this Appeal is as to whether delay in lodging the FIR of the accident could prove fatal so as to result into dismissal of the Claim Petition filed by the claimant?

5. Facts shorn of unnecessary details are as under:-

On 7.10.2001, at about 8.30 AM, Ravi was attending to his call of nature, just in front of his house. There appears to be a 20' wide kutchra road in front of the said house. At that time, Respondent No. 1, Badrinarayan, was reversing truck bearing Registration No. RJP - 1008. Since there was no conductor, probably, he was not able to notice that Ravi was sitting on the side of the road, thus while reversing the vehicle rashly

and negligently, it hit him from behind. The said accident was witnessed by AW 1 - Suresh Kumar, father of the victim and AW 2, Hari Narayan. Soon after the C.A. @ S.L.P.(C)No.11974/o8 (contd.)

- 3 -

- 3 -

accident, both of them took Ravi to the hospital for treatment. Thus, they were not in a position to lodge the FIR immediately. Even though police had come to the hospital to record FIR but it could not be recorded on account of mental agony and stress through which AW 1 - Suresh Kumar was passing. Obviously at that point of time, he was more concerned to get the medical treatment for his son rather than lodging FIR.

Being a common man, oblivious of the niceties of law, he did not deem it necessary to lodge the FIR immediately. Statements of Hari Narayan, Suresh Kumar, Asif Khan and Ravi were recorded under Section 161 CrPC. On notice being issued under Section 133 of the M.V. Act, the owner of the vehicle submitted the following reply :

"It is submitted that as per the registration I am owner of truck no. RJP- 1008. On 7.10.2001 and at the time of the accident, my truck was being driven by the driver Badri Narayan S/o sh.

Ram Nath Cast, Brahmin, Age 45 years R/o Purana Ghat, opposite Khaniya Dayal Hospital, Police Station - Transport Nagar, Jaipur. I was informed about the said accident on phone on the very same day.

Sd/- (Prahlad Singh) Dated: 16.3.2002."

6. This admission of Prahlad Singh, owner of the vehicle, amply proves that he was aware of the accident and knew that his truck bearing Registration No. RJP - 1008 had met with accident on 7.10.01. Even though the aforesaid statement of Respondent No. 2, Prahlad Singh, was recorded on 16.3.2002, but in this statement he has categorically admitted that he was informed about the said accident on phone on the C.A. @ S.L.P.(C)No.11974/o8 (contd.)

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- 4 -

4 -

very same day, i.e., on 7.10.01. It is also not in dispute that at the relevant point of time the said truck was being driven by Respondent No. 1, Badrinarayan, a fact also admitted by the owner of the truck.

7. Father of the victim, Suresh Kumar, lodged formal FIR under Section 154 of the CrPC on 26.1.2002, almost after 3 months from the date of the accident, giving details of the said accident.

8. Thereafter, as mentioned hereinabove, the Appellant, being minor, filed a claim petition through his father, before MACT claiming Rs. 11 lakhs to be awarded to him as compensation.

9. On notices being issued, Respondent Nos. 1 and 2, driver and owner of the truck respectively, remained absent, despite due service. Thus, they were proceeded ex-

parte. Written statement was filed only by Respondent No. 3, the Insurance Company.

But the Respondents did not lead any evidence in rebuttal to the evidence led by the Appellant. Even the driver of the truck did not enter the Witness Box to deny the factum of the accident.

10. Under the aforesaid circumstances, we have to examine whether the said truck was involved in the accident and if so, to what extent victim Ravi could be compensated.

C.A. @ S.L.P.(C)No.11974/o8 (contd.)

- 5 -

- 5 -

11. For the accident that had taken place on 7.10.2001 at 8.30 AM, formal FIR was lodged by Appellant's father with Police Station, T.P. Nagar, Jaipur on 26.1.2002 at 12.15 PM. Critical perusal thereof shows that Appellant's father had given the exact and vivid description of the accident and the injuries sustained by his son Ravi in the said accident. He has further disclosed therein that since 7.10.2001, his son Ravi was time and again admitted in the Hospital and was undergoing treatment, he could not lodge the FIR immediately.

12. He further mentioned that police had come to the Hospital next day to record the FIR and complete other formalities, but everyone present there suggested that since Respondent no.1 was the neighbour of the Appellant, it was not desirable to lodge an FIR and instead the matter of compensation could be sorted out in an amicable manner amongst themselves. In view of this, FIR was not lodged immediately or soon after the accident. Secondly, Ravi was still in Hospital undergoing treatment, attending to which was more important for him than lodging the FIR.

Hence, there was delay in lodging the FIR.

13. It has already been mentioned hereinabove that in response to the notice issued under Section 133 of M.V. Act, Respondent No.2, the owner of the vehicle, Prahlad Singh categorically admitted that his vehicle had met with an accident on 7.10.2001 and he was intimated about the same on phone the very same day. Thus, on this admission, C.A. @ S.L.P.(C)No.11974/o8 (contd.)

- 6 -

- 6 -

it is clearly made out that the vehicle in question was involved in the accident, causing physical injuries to Ravi.

14. On 7.10.2001, Ravi was admitted in the hospital, his injury report form was also filled up by the attending doctors, which bears the signature of Ravi's father Suresh. It is clearly mentioned therein that the cause of injury was road transport accident at about 9.00 a.m. on 7.10.2001, near his house. Suresh, father of the victim, further declared that at that time he did not want any medical examination relating to police case regarding the injuries caused to his son.

15. When the formal FIR was registered by Suresh on 26.1.2002, a charge-sheet dated 21.03.2002 against Badrinarayan was prepared for commission of offences under Section 279 and 338 of the IPC and it was requested that legal action against accused Badrinarayan be taken. This report was prepared by SHO of the concerned Police Station.

16. Under the aforesaid facts and circumstances, it is amply proved that the aforesaid truck was involved in the road accident, which had caused injuries to Ravi.

No doubt, it is true that there has been delay in lodging the FIR but the same has already been explained by Suresh. The explanation offered by him is not only satisfactory; it inspires confidence as cogent and valid reasons have been assigned C.A. @ S.L.P.(C)No.11974/08 (contd.)

- 7 -

- 7 -

therein. Not only this, a consistent stand has been taken by Suresh right from the beginning till the lodging of the F.I.R.

17. The reasons for delay are as under :-

i) Ravi was seriously injured, thus it was more important for Suresh to get him treated first.

ii) Police had arrived at the hospital, where injury report was prepared in which it was mentioned that injuries were caused on account of road accident at 9.00 a.m. on 7.10.2001.

iii) The categorical admission made by Prahlad Singh, owner of the truck, that vehicle in question was involved in the accident on 7.10.2001, when the same was being driven by Badrinarayan and this information was conveyed to him on phone the very

same day.

iv) FIR could not be lodged immediately as other persons in the locality pressurised Suresh that it could be sorted out amicably since Badrinarayan, the driver of the vehicle, was his neighbour.

v) Suresh was not aware of the niceties of law that lodging of FIR was condition precedent before filing the Claim Petition.

All these facts find place in the formal FIR which was registered on 26.01.2002 at the instance of Suresh.

C.A. @ S.L.P.(C)No.11974/o8 (contd.)

- 8 -

- 8 -

18. The cumulative effect of the aforesaid events clearly established that accident had taken place on 7.10.2001 at about 8.30 in the morning on account of rash and negligent reversing of the truck by driver Badrinarayan, owned by Respondent No. 2, Prahlad Singh. Under these circumstances, it cannot be said that delay in lodging the FIR could have proved fatal to the claim case filed by Ravi.

19. Narration of the aforesaid events would show the bona fides of Suresh. As mentioned hereinabove, a consistent stand has been taken right from the beginning till the lodging of the FIR. The chronological events narrated hereinabove inspire confidence and it does not smack of a concocted case which has been filed against the driver and the owner of the vehicle only with an intention to get compensation.

20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents C.A. @ S.L.P.(C)No.11974/o8 (contd.)

- 9 -

- 9 -

of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

22. In the case in hand, the Claims Tribunal as well as the High Court, committed grave error in not appreciating the mental agony through which Suresh was passing, whose son was severely injured.

C.A. @ S.L.P.(C)No.11974/08 (contd.)

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- 10 -

10 -

23. In the light of the aforesaid discussion, we are of the considered opinion that the MACT as well as High Court committed error in coming to the conclusion that lodging the FIR belatedly would result in dismissal of the claim petition.

24. Now, the question comes for consideration as to how much amount can be awarded to the Appellant. Record shows that victim is now aged about 16 years but is still prosecuting his studies in class V only. Apparently, on account of nature of injuries sustained by him, he was unable to prosecute his studies in right earnest and lagged behind in the same. Medical Board Certificate issued by Government R.D.B.P. Jaipuria Hospital, Jaipur dated 17.12.2004 shows that he has suffered the following injuries and was admitted as many as on four occasions in the hospital, intermittently :

"Diagnosis: Abdominal Injury with fractured Pelvis stricture urethra with ruptured urethra couplet transacted urethra (Case No. 020762) IInd Adm. 10.11.2001 to 12.11.2001, IIIrd Adm.

27.11.01 to 12.12.01; IVth Adm. 28.12.01 to 1.1.2002."

25. It is to be noted that in a case where injury sustained by victim is of permanent nature, he suffers much more than the person who succumbs to the injury. In such cases, the injured has to carry on the burden of permanent disability throughout his life, which is certainly much more painful to the victim. In the present case, the Appellant had suffered an injury of permanent nature as a result of which he is not C.A. @ S.L.P.(C)No.11974/08 (contd.)

- 11 -

- 11 -

able to control his urine. He has to suffer with it throughout his life; thus the compensation should not only be adequate but proper also.

26. On account of aforesaid injury, his permanent physical disability has been assessed at 50%. This report of the experts further shows that he is unable to control urine and suffers from continence disability which could not be cured even after surgical operation and frequent dilatation still takes place.

27. He has also been accordingly issued a permanent disability certificate by the said Medical Board. Therefore, the said certificate clearly establishes that Appellant had sustained permanent disability to his own body to the extent of 50% and even after several surgeries; he was not able to control his urination. We can well appreciate and imagine the problems and difficulties of a young boy aged 16 years, who is not able to control his urination and spoils his clothes even while attending school. We have been given to understand that he is required to go with additional sets of clothings so that he could change the same, in case they are spoiled. This is the state of affairs even as on date. We do not doubt the genuineness and correctness of the aforesaid certificate.

Even otherwise, Respondents have also not contended that this certificate is forged or fabricated and has been obtained with an intention to get compensation.

C.A. @ S.L.P.(C)No.11974/08 (contd.)

- 12

- 12 -

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28. Thus, looking into the matter from all angles, it is clearly established that in the said accident, Appellant had suffered severe injuries of permanent nature which have not been cured till date despite several surgeries. In our most modest computation, looking into the nature of injuries which are permanent in nature, we are of the opinion that a total amount of Rs. 2,50,000 (Rs. 2.5 Lakhs) to be awarded to the Appellant payable by Respondents jointly and severally, would meet the ends of justice. The aforesaid amount would also carry interest @ 6% p.a. from the date of filing of

petition till the same is actually paid. As a result thereof, award of the Claims Tribunal and judgment and order of the High Court; are hereby set aside and quashed, instead the Appellant's claim petition is allowed as mentioned above with costs throughout. The appeal is allowed accordingly. Counsel's fee quantified at Rs.

10,000/-.

.....J. [Dalveer Bhandari]J. [Deepak Verma] New Delhi
February 18, 2011.