Pankajbhai Chandulal Patel vs Bharat Transport Co. And Anr. on 4 December, 1996

Equivalent citations: 1997ACJ993, (1997)1GLR403

JUDGMENT

H.R. Shelat, J.

1. This appeal is directed against the judgment and order dated 29.3.1982 passed by the then learned Chairman of the Motor Accidents Claims Tribunal (Auxiliary) at Ahmedabad, in Motor Accident Claim Application No. 25 of 1981, dismissing the application with costs.

2. In short, it is the case of the appellant (original petitioner) that on 29.9.1980 riding the scooter No. GRA 104, he and Ramanbhai Narandas were going towards Maninagar via Kankaria in Ahmedabad. The petitioner was driving the scooter while Ramanbhai was the pillion rider. As alleged, the appellant was driving the scooter cautiously remaining on the left side of the road keeping in mind the rules of traffic. He reached near Kankaria-Balvatika at 4.30 p.m. One truck bearing No. GTD 4949, at that time came from behind. Near Balvatika he found muddy water flowing from one side to another and so there was also a thin layer of wet mud on the road. He, therefore, slowed down the speed, took the scooter on the extreme left side of the road and stopped there. He continued to sit on the parked scooter. The truck which was coming from behind hit them from behind, as a result both were knocked down and injured. The appellant was seriously injured. The truck driver was driving the truck at the hectic speed endangering the human life. Soon after the incident, the appellant and Ramanbhai were removed to the Vadilal Sarabhai Hospital. On receipt of the message from the truck driver, the police went to the hospital. The complaint against the truck driver was filed. The appellant had to undergo severe pains. He sustained heavy financial loss. In order to make the loss good, he filed the claim petition for compensation under the provisions of the Motor Vehicles Act before the Tribunal at Ahmedabad and claimed Rs. 6,00,000/-. Initially, the truck driver was joined as a party but later on he was deleted. At the conclusion of the hearing, appreciating the evidence before him, the learned Chairman of the Tribunal reached the conclusion that negligence on the part of the truck driver was not established and on that count the petition was liable to be dismissed. He accordingly dismissed the petition. It is against that judgment, the present appeal has been preferred.

3. On behalf of the appellant, Mr. K.G. Sheth, the learned advocate pressed the appeal upon one ground. According to him, the evidence on record was cogent and sufficient to hold that the truck driver was negligent in driving the truck; and because of his negligence the incident happened and appellant sustained injuries, but the Tribunal fell into error in appreciating the evidence. In the alternative, he submitted that negligence was the ancillary factor and ought not to have been given much weight in such cases.

4. In order to help the victims of the motor accidents, the tortious act, necessary provisions in the Motor Vehicles Act have been made so that they can get fair compensation and make the loss good; but the compensation is not to be awarded mechanically or as a matter of course on the happening of the incident. The party, praying for compensation filing petition under 166 of the Motor Vehicles Act, 1988 (Section 110-A of the Motor Vehicles Act, 1939) dealing with fault liability, has not only to allege the negligence on the part, of the driver of the offending vehicle(s); or the other agency responsible in law to provide motorable facilities or facilities for the traffic and safety devices but has also to establish the same leading necessary evidence, failing which he cannot succeed. In order to establish negligence, the party has to show what was the duty of the driver, the driver committed the breach of that duty and the result of the breach of that duty was injury to his person and/or property. But let us make it clear that if the compensation is claimed under the principle of no fault liability under Section 140 (Section 92-A of Motor Vehicles Act, 1939) or on the basis of structured formula under Section 163-A of the Motor Vehicles Act, 1988 negligence being not the essential ingredient, is not required to be alleged or established.

5. The petition on hand is under Section 110-A of the Motor Vehicles Act, 1939 (Section 166 of Motor Vehicles Act, 1988) and so negligence being the essential ingredient is required to be proved. We, with meticulous care and finicky details, examined the evidence and we are in general agreement with the learned Chairman who has elaborately taking pains appreciated the evidence without missing any of the points. When we are in general agreement, it is not necessary to restate all those reasonings. However, in short, we would say how the appellant has failed to establish the negligence on the part of the truck driver.

6. Pankajbhai, the appellant figured at Exh. 32. He has made an attempt to support the case alleged stating that when he was passing by the Balvatika-Kankaria, he found the muddy water coming from near the bore-well, was flowing on the road. He, therefore, stopped his scooter close to the footpath, i.e., about 2 feet away therefrom. He and pillion-rider had yet not alighted. Within a minute the truck came from behind and hit the scooter, as a result he and Ramanbhai, the pillion-rider, were knocked down and injured. But his say is rightly not accepted because of the discrepancies found by the learned Chairman. Ramanbhai Narandas was the pillion-rider. He is examined at Exh. 190. He comes out with a different story. According to him, the scooter was not parked close to the footpath as stated by Pankajbhai but they were passing by the road, the scooter was in motion, the truck was coming from behind and wanted to go ahead. Pankajbhai, therefore, gave signal. Meanwhile the scooter reached near to the muddy water on the road. Pankajbhai was trying to stop his scooter and at that time the truck came from behind and hit them from behind. They were knocked down and seriously injured. He does not, therefore, support Pankajbhai that the scooter was stationary and incident happened close to the footpath. Even in his deposition at Exh. 189, Ramanbhai does not support the case of the scooter having been parked near the footpath and thereafter happening of the incident. Mohanlal Jesingbhai was having a stall nearby. His services were also taken as punch. From his evidence, Exh. 183, it appears that the scooter was stationary, but not close to the footpath but about 10 to 15 feet away from footpath, i.e., it was in the middle of southern half of the road which was the correct side of both the vehicles. The truck proceeded ahead. The scooter collided on the rear side portion of the truck. He thus gives a go by to the case of hitting them from behind which has been consistently asserted by the appellant and also points different place of impact on

the road. Thus, the witnesses come forward with cross-cutting say. In view of the matter, panchnama drawn by the police after the complaint was lodged, is material. The panchnama is produced at Exh. 184. It may be stated that the road is 48 feet in width. It is east to west in length. Both were proceeding towards west. The correct side of both the vehicles was, therefore, the southern half of the road having the width of 24 feet. There is in the middle of the road a built-up divider, demarcating left and right side for the traffic. The police at the time of panchnama found the truck very close to the middle line dividing the road. The right hand wheel and especially the front right wheel of the truck was on the built-up divider and the scooter was found lying close to the truck. The ordinary width of the truck would be 8 to 8'/2 feet, and the fact that scooter was found close to the truck, it can well be said that the scooter was about 15 feet away from the southern footpath. If the incident had happened after scooter was parked close to the footpath as alleged by the appellant, the scooter would not have been found in the middle of the southern side of the road and the truck would not have been on the middle of the road. It is not that the truck was driven at the hectic speed and because of the velocity after the impact it went towards the middle of the road. No doubt, the appellant and the pillion-rider, Ramanbhai have stated that the truck was driven at the speed of 50 to 60 km. per hour, but that cannot be accepted because they have also made it clear that the truck could be stopped then and there within the distance of about 10 feet but not more. When that is so, looking to that braking distance, it can be said as per the Table given below Rule 147 of the Motor Vehicles Rules that the speed of the truck must not be more than 20 km. per hour, it would be even less than that. If that is so, the submission that because of the velocity the truck after the impact went towards the middle of the road, falls flat. The cross-cutting say of the witnesses regarding the impact point and manner in which incident happened indicate that they have suppressed the real fact about happening of the incident for the reasons best known to them.

7. The panchnama shows that the scooter was not at all damaged from the back, and there was no mark of impact in the front of the truck; so on the basis thereof the learned Chairman of the Tribunal was rightly led to believe that the manner in which the incident happened was conveniently suppressed and the appellant came forward with distorted versions.

8. Faced with such situation, it was submitted on behalf of the appellant that we might then consider that the incident happened when the scooter was in motion and the truck hit from behind because the truck driver took no care expected of him. The submission cannot be accepted as it is a clear departure from the case pleaded. The broad rules of pleadings apply to every Tribunal which has to follow the rules of natural justice. If the claimant comes forward with a particular case in his petition, he cannot be allowed to build up a new case in his evidence and have departure from the case initially advanced. The submission, therefore, cannot be accepted.

9. It was the next endeavour on behalf of the appellant to have a support to the. case of negligence alleged, from the statement the truck driver made before the criminal court. As alleged, the truck driver made a statement pleading guilty to the charge and on basis of his statement, the criminal court convicted the truck driver. The copy of the judgment delivered in criminal case is produced at Exh. 159. Against such submission, Mr. Mehta, the learned advocate representing the insurance company, submits that on the basis of the judgment of the criminal court, negligent driving cannot be held in the petition on hand because the Tribunal has to appreciate the evidence independently

before it and the negligence has to be established on the basis of the evidence on record. The evidence of the witnesses who gave evidence as direct evidence before the Tribunal cannot be rejected outright simply because the truck driver made a statement admitting his guilt before the criminal court and court convicted the driver on that basis.

10. In our view, the judgment of the criminal court is not relevant to prove in a civil court or before the Tribunal, the guilt or innocence of the person driving the vehicle. Evidence before the two courts on the same issue would not be the same as all the witnesses for one or another reason are not examined in both the forums or do not state consistently. At times, somewhere material evidence is suppressed or witnesses are won over, or driver of the vehicle is made to confess the guilt despite truth being otherwise; so that claimant may not fail before the Tribunal. The law, therefore, does not provide to place sole reliance on the judgment of criminal court making the claim free from claimant's onus to prove the issue of negligence. The claimant has to lead evidence to prove his case. Consequently, negligence or innocence will have to be established independent of the criminal court's finding or judgment. The Tribunal determining the issues arising in petition for compensation has, therefore, to come to its independent finding appreciating the evidence produced before it. The judgment of the criminal court can only show that the concerned driver was convicted or acquitted in the criminal case. At the most, in our view the judgment of the criminal court may provide corroboration to the evidence adduced by the claimant, but can never be the sole decisive factor qua negligent driving, for the negligence is required to be established by leading necessary evidence. If the statement confessing the guilt is made by the driver of the offending vehicle before the criminal court, it will be, at the most, if made voluntarily, corroborative piece of evidence provided of course it relates to the issue(s) in question before the civil court or Tribunal, but can never be the sole decisive factor as the claimant in compensation petition has to establish his case independent of confessional statement made by the driver. Having regard to the materials on record, if there is a reason to question or doubt the voluntary character of the confession for any reason, or owing to fraud, undue influence, allurement, promise, plea, bargain, misrepresentation; or is made or got made pursuant to any device or design or collusion so as to succeed in the claim petition, or there is nothing on record going to show that the statement made relates to the issue in question, or the same wrong under investigation, or the fact made a base for a claim before the civil court or Tribunal, the same has to be kept out of consideration unless the driver appears and explains ruling out the possibility of involuntary character or device or design, or makes it clear that it relates to the same wrong, fact or issue.

11. In this case, it is pertinent to note that the statement which is sought to be relied upon, cannot be considered as the corroborative piece of evidence because there is nothing in the judgment, Exh. 159 indicating that the same had been made voluntarily and relates to the same wrong or issue in question in the appeal on hand. Apart from that, we find the evidence on record indicating that the statement has to be looked askance at. Abdulshaikh was the cleaner in the truck. He has been examined at Exh. 196. When his evidence is considered along with other evidence, what can be deduced is that the truck driver was made to confess by the appellant paying Rs. 2,000/-, the impelling factor. When that is so, the statement cannot be said to be voluntary and echoing the real truth. There is nothing on record and even in the copy of criminal court's judgment that the statement is made voluntarily and satisfaction of the court in that regard is recorded qua the

incident or the issue in question. In view of the fact, the statement cannot be taken into consideration as the corroborative piece of evidence. Further, the direct evidence, on the contrary, shows that the incident has not happened in the manner the appellant has alleged, but in different way which can be spelt out from the evidence of the cleaner who has stated that near Balvatika when their truck reached, a scooter was found proceeding ahead of them; the truck driver blowing horn sought the side which the scooter driver, i.e., the appellant gave, the truck then went ahead and thereafter the scooter which was following was trapped in the muddy water and slipped, as appellant while crossing muddy water took no care, as a result the appellant collided against the left side portion close to the backside of the truck. Thus, the incident happened because of the sole negligence of the appellant. The panchnama reveals that no damage on the back of the scooter was found to have been caused; on the contrary, the front part of the scooter was found damaged and that suggests that the incident happened in a manner other than the appellant has alleged. Thus, negligence of the truck driver cannot be spelt out from the evidence on record and the statement of the truck driver before the criminal court, being involuntary, cannot override the direct evidence on record. We are, therefore, in full agreement with the learned Chairman of the Tribunal that the appellant has failed to establish negligence on the part of the truck driver. Consequently, the Tribunal was perfectly right in rejecting the petition.

12. When the main ingredient, namely, the negligence of the truck driver is not established, it is not necessary to deal with the question about quantum of compensation under different heads. On no other point submission is made.

13. Thus, for the aforegoing reasons, we find no substance to interfere with the judgment and order passed by the Claims Tribunal. The appeal fails and deserves to be dismissed. We, in the result, dismiss the appeal with no order as to costs.