Lantu Chandrashekar vs A.Hai Prasad Reddy And Another on 12 November, 2020

Equivalent citations: AIRONLINE 2020 TEL 126

Author: B. Vijaysen Reddy

Bench: B. Vijaysen Reddy

* THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

+ MACMA.No. 758 OF 2011

% Dated: 12.11.2020

Lantu Chandrashekar S/o. Somaiah,
Aged 21 years, Occ:Student,
R/o.Indrakaran Village, Sangareddy Mandal,
Medak District.

... APPELLANT

VERSUS

$ A. Hari Prasad Reddy S/o.A.Bharath Reddy,
Age:Major, Occ:Owner of Bajaj Auto Trolly,
Bearing No.AP23W 2808, R/o.H.No.388,
Redraram Village, Patancheru Mandal,
Medak District And Another.

...RESPONDENTS

! Counsel for the Appellant : Sri Pratap Narayan Sanghi.

^ Counsel for the Respondent : S A V Ratnam

< GIST:

> HEAD NOTE:

? Cases referred

1. (2010) 6 SCC 601
2. AIR 2003 Bom 369
3.(2009) 11 Supreme Court Cases 545
4.1993 ACJ 447
5.1997 ACJ 993

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THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

MACMA.No.758 of 2011

JUDGMENT:

This appeal is preferred by the appellant - claimant challenging the order dated 14.12.2010 in OP.No.82 of 2009 passed by the Motor Accidents Claims Tribunal cum Principal District Judge, Medak at Sangareddy.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, by the claimant claiming compensation of Rs.1,50,000/- on account of the injuries sustained by him in a motor accident.

3. The averments in the claim petition are as follows:

> On 16.01.2009, at about 10 AM, while the claimant was proceeding on his motor cycle bearing No.AP 23 M 3203 from Indrakaran Village, the driver of the Bajaj Auto Trolley bearing No. AP 23 W 2808 drove in high speed in a rash and negligent manner and dashed his motor cycle. Due to which, the claimant received fracture of clavicle bone, left occipital bone, head injury and other injuries all over the body. Immediately, he was shifted to Care Hospital, Nampally and he was treated as inpatient from 16.01.2009 to 27.01.2009.

The claimant incurred a sum of Rs.30,000/- towards medical expenses. The injuries were not healed and the claimant was not able to perform his normal duties. The Sarpanch of the village lodged a complaint before the Sub-Inspector of Police, Indrakaran and a case in Cr.No.3 of 2009 was registered under Section 337 IPC against the driver of the crime vehicle and the same is pending before the Additional Judicial First Class Magistrate, Sangareddy. The respondent No.1 is the owner and the respondent No.2 is the insurance company of the crime vehicle and they are jointly and severally liable to pay the compensation.

4. The respondent No.1, owner of the vehicle, filed a counter denying the averments made in the claim petition. The rash and negligent act on the part of the driver of the crime vehicle was denied and negligence was attributed to the claimant. Further, the respondent No.1 stated that the claim petition is liable to be dismissed for non-joinder of necessary parties i.e. owner and insurance company of the motor cycle driven by the claimant. The respondent No.1 further denied the age,

occupation, earnings of the claimant, nature of injuries and the treatment taken by the claimant and subjected him to strict proof of the averments in the claim petition.

5. The respondent No.2, insurance company, in its counter denied rash and negligent act on the part of the driver of the crime vehicle and attributed sole negligence to the rider of the motor cycle. The respondent No.2 filed an additional counter stating that the driver of the crime vehicle was not holding valid and effective licence at the time of the accident and contravened Rule 3 of the Central Motor Vehicle Rules, 1989. As per the registration certificate, permit and policy, the crime vehicle is a commercial vehicle and the driver should have LMV Transport driving licence, but as per the driving licence issued by the RTA, the driver is not holding the said licence and thus, the respondent No.1 has violated the terms and conditions of the insurance policy and as such, the respondent No.1 alone is liable to pay compensation and the respondent No.2 is not liable. It is further stated that as per the MLC issued by Care Hospital, the claimant was admitted on 16.01.2009 but as per FIR and charge sheet, the accident occurred on 18.01.2009, which shows that prior to the accident, the claimant got treatment, as such, the insurance company is not liable to pay any compensation. The owner and the insurance company of the motor cycle are also necessary parties, since there is a collision between the motor cycle and the auto trolley.

6. The claimant got examined himself as P.W.1 and marked Exs.A1 to A7. On behalf of the respondent No.2, only Ex.B1, insurance policy was marked and no oral evidence was adduced.

7. The tribunal below dismissed the claim petition by holding that there is a serious doubt with regard to the occurrence of the accident i.e. whether it occurred on 16.01.2009 or 18.01.2009. The tribunal below held that as per Exs.A3, A5 and A6 - medical records of Care Hospital - the claimant was admitted on 16.01.2009 with a history of road traffic accident, but the FIR and the charge sheet, Exs.A1 and A2, show the date of the accident as 18.01.2009. Further, the report was lodged by the Sarpanch of the Indrakaran village on 22.01.2009 stating that the accident occurred on 18.01.2009. Since there was a serious discrepancy between the date of the accident, going by the documents filed and relied upon by the claimant, the tribunal below held that the very genesis of the accident is not proved and thus, dismissed the claim petition.

8. Mr. Pratap Narayan Sanghi, learned counsel for the appellant, submitted that the tribunal below could not have dismissed the claim petition since the driver of the crime vehicle pleaded guilty. As per Ex.A4, order in CC.No.190 of 2009 dated 04.03.2009, the accused driver was convicted under Section 252 Cr.P.C. and sentenced to pay fine of Rs.1,000/- in default to undergo simple imprisonment for four weeks for the offence under Section 338 IPC and sentenced to pay fine of Rs.500/- in default to undergo simple imprisonment for two weeks for the offence under Section 337 IPC. Learned counsel vehemently submitted that in view of the conviction by plea of guilty, the involvement of the crime vehicle and negligence on the part of the driver also stand proved, as such, the tribunal below grossly erred in doubting the date of the accident and involvement of the crime vehicle in the accident. Learned counsel further submitted that that there is an admission by the respondent No.2 in its additional counter about the accident having taken place on 16.01.2009 and in view of such admission, there was no necessity for the claimant to prove through any witness the factum of accident and also the discrepancy with regard to the date of the accident.

9. Smt. S.A.V. Ratnam, learned counsel for the respondent No.2, submitted that the appellant was admitted as an inpatient in Care Hospital on 16.01.2009. There was collusion between the driver of the crime vehicle and the claimant, as a result of which, the driver pleaded guilty and fine was imposed as per Ex.A4 judgment. It is settled principle of law, the judgment of the criminal Court is not binding on civil Court and the MACT. The insured vehicle was planted by the claimant for fraudulently claiming compensation. The claimant or any of his family members have not lodged complaint immediately on the date of the accident, which is highly unusual. If it was a medico legal case, as stated by the claimant, the police would have referred him to a Government hospital. The Sarpanch of the village also colluded with claimant and lodged a complaint on 22.01.2009 by mentioning the date of the accident as 18.01.2009. However, the date of accident in the claim petition is shown as 16.01.2009.

10. Heard both sides.

11. This Court perused the contents of the claim petition, counter and additional counter of the respondent No.2. In its counter, the respondent No.2 denied the allegations in the claim petition and did not admit the accident and involvement of the alleged crime vehicle. In para 3 of the additional counter, the respondent No.2 specifically asserted that as per the MLC issued by the Care Hospital, the claimant was admitted on 16.01.2009. However, as per the FIR and Charge Sheet, the accident occurred on 18.01.2009, which shows that the claimant got treatment on 16.01.2009 prior to the date of the accident, as such, the insurance company is not liable to pay compensation. In 'para 4' it was stated that as per the police record two vehicles were involved in the accident and there was collision between the vehicles. Further, in para 5, the respondent No.2 stated that as per the records, the rider of the motor cycle drove it in a rash and negligent manner and contributed to the accident, as such the insurance company is not liable to pay compensation to the claimant.

12. The submission of the learned counsel for the appellant that there is an admission about the accident and involvement of the crime vehicle by the respondent No.2 in paras 3, 4 and 5 of the additional counter is without any force. The respondent No.2, as pointed above, made such averments regarding involvement of the vehicle and accident by stating that the same are as per the FIR, police records and medical records. Since the words 'as per' were prefixed in each of the sentences in paras 3, 4 and 5 of the additional counter of the respondent No.2, it cannot be said that there is an unqualified or unequivocal admission by the respondent No.2 with regard to the occurrence of the accident. In M/s. JEEVAN DIESELS & ELECTRICALS LTD. v. M/S. JASBIR SINGH CHADHA (HUF) & ANR1. the Hon'ble Supreme Court dealing with passing of judgment (2010) 6 SCC 601 upon admission as provided under Order XII Rule 6 CPC, held as follows:

> "16. In this connection reference may be made to an old decision of the Court of Appeal between Gilbert vs. Smith reported in 1875-76 (2) Chancery Division 686. Dealing with the principles of Order XL, Rule 11, which was a similar provision in English Law, Lord Justice James held, "if there was anything clearly admitted upon which something ought to be done, the plaintiff might come to the Court at once to have that thing done, without any further delay or expense" (see page

687). Lord Justice Mellish expressing the same opinion made the position further clear by saying, "it must, however, be such an admission of facts as would shew that the plaintiff is clearly entitled to the order asked for". The learned Judge made it further clear by holding, "the rule was not meant to apply when there is any serious question of law to be argued. But if there is an admission on the pleading which clearly entitles the plaintiff to an order, then the intention was that he should not have to wait but might at once obtain any order" (see page 689).

17. In another old decision of the Court of Appeal in the case of Hughes vs. London, Edinburgh, and Glasgow Assurance Company (Limited) reported in The Times Law Reports 1891-92 Volume 8 at page 81, similar principles were laid down by Lord Justice Lopes, wherein His Lordship held "judgment ought not to be signed upon admissions in a pleading or an affidavit, unless the admissions were clear and unequivocal". Both Lord Justice Esher and Lord Justice Fry concurred with the opinion of Lord Justice Lopes.

18. In yet another decision of the Court of Appeal in Landergan vs. Feast reported in The Law Times Reports 1886-87 Volume 85 at page 42, in an appeal from Chancery Division, Lord Justice Lindley and Lord Justice Lopes held that party is not entitled to apply under the aforesaid rule unless there is a clear admission that the money is due and recoverable in the action in which the admission is made.

19. The decision in Landergan (supra) was followed by the Division Bench of Calcutta High Court in Koramall Ramballav vs. Mongilal Dalimchand reported in 23 Calcutta Weekly Notes (1918-19) 1017. Chief Justice Sanderson, speaking for the Bench, accepted the formulation of Lord Justice Lopes and held that admission in Order 12, Rule 6 must be a "clear admission".

20. In the case of J.C. Galstaun vs. E.D. Sassoon & Co., Ltd., reported in 27 Calcutta Weekly Notes (1922-23) 783, a Bench of Calcutta High Court presided over by Hon'ble Justice Sir Asutosh Mookerjee sitting with Justice Rankin while construing the provisions of Order 12, Rule 6 of the Code followed the aforesaid decision in Hughes (supra) and also the view of Lord Justice Lopes in Landergan (supra) and held that these provisions are attracted "where the other party has made a plain admission entitling the former to succeed. This rule applies where there is a clear admission of the facts on the face of which it is impossible for the party making it to succeed". In saying so His Lordship quoted the observation of Justice Sargent in Ellis vs. Allen [(1914) 1 Ch. D. 904] {See page 787}.

21. Similar view has been expressed by Chief Justice Broadway in the case of Abdul Rahman and brothers vs. Parbati Devi reported in AIR 1933 Lahore 403. The learned Chief Justice held that before a Court can act under order 12, Rule 6, the admission must be clear and unambiguous.

(emphasis supplied)

13. The High Court of Bombay in WESTERN COALFIELDS LTD. v. SWATI INDUSTRIES2 dealing with issues arising out of Order XII Rule 6 CPC and admissibility of an admission contained in a plea of guilty recorded by the criminal Court as evidence held as under:

> 3. Order 12, Rule 6, C.P.C. reads as under:
>
> Judgment on admissions.-- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> (2) Whenever a judgment is pronounced under Sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

AIR 2003 Bom 369

4. In the matter of judgment on admission, general rule is that the pleadings are to be read as a whole; admissions in pleadings cannot be dissected. The Court is vested with jurisdiction to pass a decree on admission on the strength of the principle laid down under Section 58 of the Evidence Act that admitted facts need not be proved and as such admissions can be considered as substantive evidence on which a decree can be passed.

5. If one examines the pleadings particularly para 9 of the written statement which is in reply to para 6-D of the plaint, and paras 20 and 21 of the specific pleadings, the admissions given by the defendant is not absolute, but it is conditional and it has been specifically stated that in terms of another contract, the said amount is already appropriated. Therefore, in these facts and circumstances, it cannot be said that there is an unqualified admission on the part of the defendant which would invite a decree against it for the said amount. The nature of admission made by the defendant cannot be held to be conclusive so as to invite an order under Rule 6 of Order 12, C.P.C. The nature of admission is such that it is only a statement of the case upon which the defendant intended to rely and would not operate as an estoppel against him as understood under Section 115 of the Evidence Act. As this admission made by the defendant is qualified, it is to be read as a whole while considering whether a decree can be passed against the defendant on such admission. As the admission is qualified and it is specifically pleaded that the said amount has been appropriated against another claim under contract between the parties, the Court should not have proceeded to pass the impugned order which would be discretionary. (Dudhnath Pande v. Sureshchandra Bhattasalli,). Therefore, in the facts and circumstances, the Court ought not to have passed the impugned order in the manner it has directed the defendant to deposit the amount in Court with a condition that on failure to deposit, the defendant will be liable to pay the interest on the said amount which was to be determined."

14. The further submission of the learned counsel for the appellant that the driver of the crime vehicle pleaded guilty and as such, the accident is deemed to have been proved is contrary to settled principle of law. The judgment of the criminal Court is not binding on the civil Court as per the provisions under Sections 40 to 43 of the Indian Evidence Act. In SETH RAMDAYAL JAT v. LAXMI PRASAD3 it was held by the Hon'ble Supreme Court as follows:

> "16. If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K.G. Premshanker (supra), wherein this Court inter alia held:
>
> "30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to (2009) 11 Supreme Court Cases 545 Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is--whether judgment, order or decree is relevant, if relevant--its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

17. It is, however, significant to notice a decision of this Court in Karam Chand Ganga Prasad. v. Union of India [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled, stating:

> "33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was

> not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act."

[See also Syed Askari Hadi Ali Augustine Imam and Anr. v. State (Delhi Admn.) (2009 5 SCC 528]

18. Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh Marwah. v. Meenakshi Marwah [(2005) 4 SCC 370]. Relying on M.S. Sheriff (supra) as also various other decisions, it was categorically held:

> "32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given."

19. The question yet again came up for consideration in P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu [AIR 2008 SC 1884], wherein the law was stated, thus:

> "11. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

20. It is now almost well-settled that, save and except for Section 43 of the Indian Evidence Act which refers to Sections 40, 41, and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit. What, however, would be admissible is the admission made by a party in a previous proceeding."

15. It would be relevant to point out further observations of the Apex Court in SETH RAMDAYAL JAT's case (2 supra) dealing with evidentiary value of an admission made in criminal Court notwithstanding the judgment of the criminal Court, which are as follows:

> 22. Section 58 of the Evidence Act reads as under:
>
> "58. Facts admitted need not be proved.--No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

In view of the aforementioned provision, there cannot be any doubt or dispute that a thing admitted need not be proved.

(See KENDRIYA VIDYALAYA SANGATHAN V. GIRDHARILAL YADAV [(2004) 6 SCC 325 : 2005 SCC (L&S) 785] , L.K. VERMA V. HMT LTD. [(2006) 2 SCC 269 : 2006 SCC (L&S) 278], AVTAR SINGH v. GURDIAL SINGH [(2006) 12 SCC 552] and GANNMANI ANASUYA V. PARVATINI AMARENDRA CHOWDHARY [(2007) 10 SCC 296].)

23. We, therefore, are of the opinion that although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible. The question as to whether the explanation offered by him should be accepted or not is a matter which would fall within the realm of appreciation of evidence... "

> 16. The principle of law laid down in the above decision is that "in spite of judgment of criminal Court not being relevant for proving civil liability, admission in a civil Court of statement of plea of guilty before a criminal Court was admissible in evidence".

17. The High Court of Allahabad in RAJA RAM GARG v. CHHANGA SINGH4 , while dealing with the issue of whether proceedings in motor accident claim petition be stayed pending disposal of criminal case, observed as under:

> "... The judgment in the Criminal Court would not be relevant in the claim petition under the Motor Vehicles Act and certainly not for establishing the fact in issue, by virtue of Sections 40 and 43 of the Evidence Act. Similarly, the judgment in the claim petition would be equally not relevant in the criminal case/sessions case, and certainly not for establishing the guilt of the accused therein."

18. The High Court of Gujarat in PANKAJBHAI CHANDULAL PATEL v. BHARAT TRANSPORT CO.5, while dealing with granting compensation under the Motor Vehicles Act, held as under:

> 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 1993 ACJ 447 1997 ACJ 993 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."

19. The appellant/claimant cannot be given benefit of principle of law laid down in the above judgments since the claimant did not choose to adduce evidence of the driver of the crime vehicle and there was no admission of guilt by the driver before the civil Court.

20. In view of the above discussion, this Court finds there is no merit in the appeal. It is, hereby, dismissed.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

_____ B. VIJAYSEN REDDY, J November 12, 2020 Note: L.R. copy to be marked.

B/o.

DSK