GAHC010062882009

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./51/2009

PHOOL BHANU BEGUM
W/O LT. AMIR ALI R/O KHATPATHAR, DARIKAPAR, P.O., P.S., DIST. SIBSAGAR.

VERSUS

SRI UDHAN SINGH and ORS
S/O LT. KISON SINGH R/O GANAK PATTY TINALI A.T. ROAD, P.O., P.S. and DIST. SIBSAGAR, ASSAM

2:SHRI BUDHAN MAHATO DRIVER
S/O ATMA MAHATO R/O OLD A.T. ROAD
SIBSAGAR TOWN
P.O.
P.S. and DIST. SIBSAGAR
ASSAM.

3:THE BRANCH MANAGER

ORIENTAL INSURANCE CIO. LTD. SIBSAGAR BRANCH
SIBSAGAR
P.O.
P.S. and DIST. SIBSAGAR
ASSAM

Advocate for the Petitioner : MR.P J PHUKAN

Advocate for the Respondent : MR.S DUTTA

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

09-01-2024

Heard Mr. PJ Phukan, learned counsel for the appellant. Also heard Mr. S Dutta, learned counsel for the respondent No.3 Insurance Company.

2. The appellant as claimant filed a case vide MAC Case No.21/1999 before the learned Member, MACT, Sivasagar for granting of suitable compensation on account of the death of her husband Amir Ali, who died in a motor vehicle accident which took place on 02.02.1999 near Damani Petrol Pump, Sivasagar Town over National Highway No.37 at around 7.30 P.M., due to rash and negligent driving of a driver of a vehicle (Truck) bearing registration No.AMS-6085.

3. In connection with the aforesaid accident a case was registered vide Sivasagar P.S Case No.49/1999 under Sections 279/427/304(A)IPC and after completion of the investigation, the concerned Investigating Officer also submitted charge sheet against the drive of the alleged offending vehicle.

4. Subsequently, the appellant/claimant moved a claim petition before the Court of MACT, Sivasagar claiming compensation amounting to Rs.5,75,000/- and the opposite parties i.e. the concerned owner and driver of the vehicle as well as the Insurer of the vehicle i.e. the Oriental Insurance Company Ltd., also filed their written statements in response to the said MAC Case No.21/1999. The

learned Member MACT, Sivasagar vide impugned judgment and order dated 06.02.2008 while dismissing the petition also stated that the claimant is not entitled to get compensation from the opposite party No.1, 2 and 3 i.e. the owner, driver and insurer of the alleged offending vehicle.

5. Being aggrieved and dissatisfied with the said judgment and order dated 06.02.2008, the appellant/claimant has preferred this appeal.

6. The learned counsel for the appellant/claimant Mr. PJ Phukan has submitted that once the FIR has been registered against a negligent driver and even a report under Section 173 Cr.P.C., has been presented by the Investigating Agency to the competent court, no further proof is required in summary proceedings like MAC cases as to the negligence of the driver of an offending vehicle, as such the Tribunal had erred in law in holding that the factum of the accident having taken place with the truck driver i.e., by respondent No.2 has not been proved.

7. Learned counsel for the appellant also pointed out that the deposition of PW-2 has not been relied upon by the Tribunal, though it has been clearly stated in the impugned judgment and order that the offending truck suddenly hit the bicycle of the deceased in the process of turning. He could notice the number of the truck which was AMS-6085. It is also submitted that the strict proof of evidence will not apply and the court can look into evidence without being exhibited as required in civil suits. As such, the learned Member, MACT, Sivasagar ought to have considered this aspect on the basis of law and other

relevant facts.

8. It is further submitted by the learned counsel for the appellant that in motor accident claims cases, the evidence should not be scrutinized in the manner as it is done in a civil suit or a criminal case as it is summary enquiry, if there is some evidence to arrive at the finding that itself is sufficient. Learned counsel for the appellant also admitted that on enquiry, he came to know that the respondent No.2 i.e. the driver of the offending vehicle was eventually acquitted by the trial court in the criminal case that he was facing. But the parameters of acquittal in a criminal case cannot be read into summary proceedings in another case.

9. Learned counsel for the appellant also contended that the PW-3, the Investigating Officer (in criminal case) admitted that Siddique Ali (PW-2) was not examined by him during investigation of the criminal case nor the said person was cited as a witness in the said case. PW-3 also admitted that he did not disclose the source of getting the registration number of the offending truck.

He also denied that he could not get any definite information that the vehicle bearing registration number AMS-6085 was involved in the accident.

10. According to the learned counsel for the appellant, the statements of PW-2 and PW-3 have been ignored by the learned Member, MACT, Sivasagar while delivering the impugned judgment.

11. It is also specifically stated by learned counsel for the appellant that the

no-fault liability was awarded vide order dated 24.07.2000 in favour of the appellant/claimant in MAC Case No.21/1999. Against the said award, the Insurance Company had preferred a revision petition vide CRP No.430/2000 which was dismissed by this Court on 01.02.2002.

12. In support of his submission, the learned counsel for the appellant has relied upon the following case laws:

1. Mangla Ram Vs. Oriental Insurance Company Ltd. And Others, reported in (2018) 5 SCC 656.

2. United India Insurance Company Ltd. Vs. shila Datta and others, reported in (2011) 10 SCC 509.

3. Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, reported in (2013) 10 SCC 646.

13. In response, learned counsel for the respondent No.3 Insurance Company, Mr. S Dutta, has submitted that once the Tribunal had come to a logical finding on the basis of evidence led before it, including the testimony of the person, who claimed to be an eye witness to the accident that the accident itself with the alleged offending vehicle had not been proved, this Court would not interfere on the finding of fact and reverse the same to grant compensation to the appellant/claimant.

14. Learned counsel for the Insurance Company further submitted that the incident occurred on 02.02.1999, but the FIR was lodged on 27.02.1999 i.e. after 25 days of the accident. The owner of the vehicle was examined as DW-1

before the Tribunal who clearly stated that his vehicle had never met any accident on 02.02.1999. Both the owner and driver of the vehicle also submitted their written statements before the Tribunal and they categorically denied the involvement of the alleged offending vehicle to any accident on 02.02.1999. Under such backdrop, the Tribunal had rightly passed the judgment by dismissing the claim petition of the appellant, which needs no interference by this Court.

15. Having heard the learned counsel for the parties and having gone through the pleadings and the limited evidence available before this Court, the question, which this Court is required to adjudicate upon is as to whether, on the basis of the reasoning given by the Tribunal, the same being undoubtedly not without logic and very much a possible view, this appeal should be dismissed or whether taking into account the fact that the police after investigation, found a *prima facie* case to be made out against the respondent No.2 of being guilty of negligent driving, thereby causing a motor vehicle accident, leading to the death of the deceased Amir Ali, husband of the present appellant.

16. Admittedly, PW-1 who is the appellant/claimant in the case was not present when the accident occurred. According to PW-1, his neighbour, Mridul Ali informed her about the accident. Since her husband had already been shifted to Pragati Nursing Home, she immediately went to the Hospital, but before her arrival in the Hospital, her husband had declared dead.

17. PW-2 stated before the Tribunal that he had seen the accident that a truck

bearing No. AMS-6085 coming in a rash and negligent manner, knocked down the deceased Amir Ali and fled away from the spot. They had shifted the injured to Pragati Nursing Home.

18. PW-3 is the investigating officer, who stated that on 02.02.1999, on receipt of the information regarding accident near Damani Petrol Pump, Sivasagar, he was endorsed by the Officer-in-Charge to enquire about the accident. He went to the spot, and came to know that the injured was taken to the Pragati Hospital, then he went to the Pragati Hospital, by that time the injured had succumbed to his injuries. The body of the deceased Amir Ali was sent to Sivasagar Civil Hospital for autopsy. Thereafter, he again came to the spot and the eye witnesses disclosed that they could see the number of the offending truck partly i.e. the first two letters AM, and the last figure of the registration number i.e. 5. After twenty days of investigation, he came to know that the alleged offending truck belonged to one Ugan Prasad Singh and the number of the truck was AMS-6085 and the truck was being driven by one Budhan Mahatoo. Thereafter, he lodged the FIR vide exhibit-1.

19. Though this Court cannot shut its eyes to the fact that in today's time, collusion between investigating agencies and complainants and accused cannot be ruled out, however, in absence of any proof, even attempted to be led on that issue, the other possibility can also be accepted that the Investigating Officer on enquiry came to know that the alleged offending vehicle of the owner Ugan Prasad was involved in the accident, causing the death of the husband of the appellant. Thereafter, the investigating officer having verified the identity of the alleged offending truck upon investigation submitted report under Section

173 Cr.P.C., to the court of the competent Magistrate, as regards the criminal proceeding against the respondent No.2, the driver of the offending vehicle.

20. No doubt, the findings of fact unless found to be perverse, should not be upset by an appellate court, however, in cases of compensation claimed by the next of the kin of the deceased or by victims, who are severely injured in the motor vehicle accidents, the Hon'ble Supreme Court generally adopted the view that the latitude should be given to claimants, and *prima facie* evidence pointing towards negligence of persons driving an offending vehicle, should be generally accepted, in order to ensure that the next of the kin of those deceased or victims who are severely injured are not made to suffer when there is no negligence on their own part.

21. In the case of *Parmeshwari Vs. Amir Chand and others*, reported in *AIR 2011 SC 1504,* wherein citing from another judgment in *Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others,* reported in *2009 (3) RCR (Civil) 805*, it was held as follows:

> "*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.*"

22. On the effect of a delayed FIR on a claim petition for compensation before a Motor Accident Claims Tribunal, Hon'ble Supreme Court in the case of *Ravi Vs.*

Badrinarayan and Others, reported in *(2011) 4 SCC 693* has held that the rule of strict liability is not required when the driver of the offending vehicle is found negligent. In another case, *N.K.V Brothers (P) Ltd. Vs. M Karumai Ammal and Others* reported in *AIR 1980 SC 1354* on the issue that a Court/ Tribunal should not get bogged down by technicalities etc., while dealing with the claim petitions of victims of motor vehicle accidents.

23. In the case of Parmeshwari (supra) it was held as under:

> "*Unfortunately, this Court finds that the said well considered decision of the Tribunal was set aside by the High Court, inter alia, on the ground that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh, but none from the Office of SSP, Hanumangarh came to prove the complaint. The filing of the complaint by the appellant is not disputed as it appears from the evidence of PW-3 Satbir Singh, who is the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar. If the filing of the complaint is not disputed, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of the SSP to prove the complaint. The official procedure in matters of proceeding with the complaint is not within the control of the appellant, who is an ordinary village woman. She is not coming from the upper echelon of society. The general apathy of the administration in dealing with complaints lodged by ordinary citizens is far too well on to be overlooked by the High Court. In this regard, the perception of the High Court in disbelieving the complaint betrays a lack of sensitized approach to the plight of a victim in a motor claim case.*"

24. Without doubt, the circumstances of those cases are not identical to the present case, but, in fact, it was argued for the respondents that once an accident itself at the hands of the respondent No.2 was not established, then the question of foisting liability upon the insurer and the owner of the truck

does not arise. However, as already stated earlier that strict liability need not be proved in such like cases of motor accident claim and once the investigating agency had pointed towards the negligence of the respondent No.2/driver by filing a report under Section 173 Cr.P.C. against him, this Court finds that the appellant/claimant is entitled for compensation.

25. It is true that immediately after the accident, on receipt of the information regarding accident, a GD entry was recorded vide Sivasagar P.S. GDE No.62 dated 02.02.1999, but the said GD Entry was not exhibited before the Tribunal. However, from the FIR, it reveals that the number of the truck was not mentioned, only it was informed that an accident occurred in Sivasagar Town, near Damani Petrol Pump. But, PW-3 clearly stated that after enquiry, he came to know that a vehicle bearing No.AMS-6085 was involved in the accident causing death of the husband of the appellant/claimant and after completion of the investigation, charge-sheet was submitted against the driver of the said vehicle i.e. respondent No.2. In such a case, the liability to pay compensation would fall on the respondents. The respondent No.2 was acquitted in the criminal trial, where the parameters of establishing guilt are far more stringent, would not in my opinion, detract from the liability of the respondents to pay compensation to the appellant/claimant, in a motor accident claims case, which is a beneficial legislation.

26. In view of the above, this Court is of the opinion that on the basis of the FIR lodged in connection with the alleged accident and subsequent submission of charge-sheet in the criminal proceeding initiated against respondent No.2, driver, for the purpose of claim petition, he is held to be negligent in driving the

truck, bearing No.AMS-6085 leading to the accident causing death of the deceased Amir Ali, husband of the appellant/claimant. Hence, the judgment and order dated 06.02.2008 passed in MAC Case No.21/1999 is hereby set aside.

27. Consequently, the matter is now remitted to the Tribunal to determine the amount of compensation liable to be paid by the respondents to the appellant/claimant as also to determine the liability for paying such compensation. Obviously, such amount of compensation would be determined wholly on the basis of the evidence led before the Tribunal.

28. In the result, the appeal is partly allowed, however, there is no order as to cost.

29. Appeal stands disposed of accordingly.

30. Send back the LCR.

JUDGE

Comparing Assistant