

Court No. - 37

Case :- FIRST APPEAL FROM ORDER No. - 3989 of 2017

Appellant :- ShrimatiSaroj And 3 Others

Respondent :- Raman Malhotra And 4 Others

Counsel for Appellant :- Vishnu Prakash Srivastava

Counsel for Respondent :- Mohan Srivastava,A. K.

Upadhyay,MohanSrivastava,Vijai Prakash Awasthi,Vijay Kumar Rathi

Hon'ble Dr. KaushalJayendraThaker,J.

1. Heard learned counsel Shri Vishnu Pratap Srivastava for the appellants and learned counsel Shri Mohan Srivastava for the respondents-Insurance Company. Other respondents have absented themselves and are not represented though served.
2. This appeal, at the behest of Claimants challenges the judgment and award dated 13 09 2017 passed by Motor Accident Claims Tribunal Bulandsaher (hereinafter referred to as 'Tribunal') in M.A.C.P No.1 of 2010, whereby the claim petition filed by the claimants was dismissed by the tribunal.
3. The parties are referred to as claimants/appellants(original applicants). and insurance company/ /respondents.
4. The brief facts as they emerge are on the fateful day namely 30th of October, 2008, the deceased Satyendra Pal and his brother Krishna Kumar were easing near Ram Lila Ground when Krishna Kumar in the early morning at about 4.00 a.m. was going to drop Gulabati who was serving at a distant place. A Maruti Zen came and dashed with the deceased. The deceased breathed last on the spot. A First Information Report was given by Krishna Kumar in the early morning on the same day at 8.30. The post mortem report was carried out and the report was furnished at 3.00 p.m. on the very same day. The deceased Satyapal Singh was 46 years of age, he was serving in the Telephone

Department as Senior T.O. at Meghrajpur and he was earning Rs.18,877/- per month. He had also his agricultural land. Respondent No.1 Raman Malhotra was the owner of the vehicle and the vehicle was being driven by whom was not known. The Insurance Company of the Vehicle was arrayed as Respondent No.3. The owner Raman Malhotra filed his replies contending that he had already sold the vehicle to one Marketing Automobiles Pvt. Ltd., Arvind Marg, New Delhi, and the same was sold on 28.12.2006 and, therefore, he was not the owner of the vehicle. He has no reason to be impleaded as respondent in the said petition and the vehicle if was got released, it was by person who was not he himself. The respondent No.2 also remained absent. Respondent No.3 has filed reply of negation.

5. During the course of the hearing, several applications were given to call for the S.S.P. and to implead respondent Nos. 4 and 5 who are deemed to be the owner of the vehicle. The Tribunal framed five issues but did not decide any of them except issue No.1 holding that the vehicle was not involved in the accident and the claim petition was dismissed.

6. The Tribunal dismissed the claim petition on two counts. It did not believe the presence of the eye-witness who deposed before it and that if the brother of the deceased had seen the vehicle and given the number to P.W.2, he should have been examined on oath and why the F.I.R. was silent qua the number of the vehicle ?

7. Appellants herein had examined P.W.1 i.e. the widow of the deceased, P.W.2 an unknown person who was an eye witness but unfortunately his name was nowhere shown in the charge-sheet. P.W. 3 was the scribe of F.I.R. and also the brother-in-law of the deceased who has been examined on oath. The F.I.R. and the charge-sheet and the site plan were on record of the Tribunal.

8. Learned counsel for appellants has submitted that Tribunal has misdirected itself as the number though was not mentioned, the charge-sheet shows that the vehicle was involved in the accident, the evidence of P.W.3 and 4 was disbelieved on the ground that their presence at the spot was very doubtful. It is further submitted that the Tribunal even in absence of any rebuttal evidence led by the respondents, relied on the decisions of this High Court so as to reject the claim petition of the claimants. The decision in National Insurance Co. Ltd. Vs. Smt. Saheen Parveen and other reported in 2017 (1) ACCD 161 ALD could not have been relied by the Tribunal instead the Tribunal ought to have relied on earlier decisions of this High Court wherein it has been held that trappings of Civil Courts should not be strictly adhered to by the Tribunal. It is further submitted that the owner No.1 had seen that the vehicle from the custody of CJM was released by owner during the pendency of the criminal proceedings lodged against him.

9. Learned counsel for the appellant has relied on the decision of the decision of the Apex Court in **Kusum Lata and Others Vs. Satbir and others, 2011 (1) AICC 651**, more particularly on para Nos. 8 and 9 which are as under:

"8. 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. 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. Learned counsel for the respondent has submitted that involvement of vehicle in the accident has been rightly held to be doubtful as the F.I.R. was lodged against an unknown vehicle, the number of the vehicle was not mentioned in the F.I.R. The owner also contended that he had long back sold the vehicle. It is further submitted that the author of the F.I.R. was not examined on oath and in the alternative, it is further submitted that the evidence of the witnesses is rightly not believed by the tribunal as their presence is found to be doubtful at the time of accident. It is further submitted that the claimants have though changed advocate have not examined the real brother who was with the deceased and has prayed for dismissal of this appeal.

11. Heard learned Advocates for the litigating parties.

12. Recently in **First Appeal From Order No.866 of 2003, Smt. Santosh & others versus United India Insurance Company and others**, decided on 4.3.2020, this Court has held as under:

"While interpreting the provisions of Section 168 and 168 (4) of the Motor Vehicle Act, 1988 (hereinafter referred as the 'Act') were ignored by the Tribunal while deciding the matter. The Tribunal rejected the clam petition, though the deceased was admitted in the

hospital and the F.I.R. clearly spelt out that it was due to the involvement of the vehicle. This fact was proved as the driver fled away with the vehicle though G.D. entry also there with police authorities. The post mortem report also proved the fact that deceased died due to accidental injuries. The vehicle tractor trolley was proved to be involved in the accident. The tribunal held that the driver, owner and insurance of the motor cycle was not joined as a party. The accident had taken place on 25.05.2001 at 9.30 p.m. as a result of involvement of tractor trolley which was not disputed by owner or driver or Insurance Company which has been proved by cogent evidence just because there are certain contradictions in the testimony of the witness and because who got the injured, in the hospital is not mentioned, the claim petition was dismissed and being the claimants' case is disbelieved. The fact is that the charge sheet was filed pursuant to F.I.R lodged is not just because in dispute the tractor trolley was not confiscated detained on the spot it is held that the vehicle was not involved in the said accident. Recently the High court of Gujarat in **Joshi Rajendrakumar Popatlal Vs. Thakor Ramnaji Hamirji and Others, reported in 2020 ACJ 365** has held that the Tribunal should not decide claim petition by taking hyper technical approach and thereby frustrate the provision of beneficial peace of legislation. The Apex Court in **Bimla Devi and Ors. Vs. Satbir Singh and Ors. 2013 (4) SCC 345** has held that hyper technicality should not be allowed to frustrate the aim of beneficial peace legislation. In our case hyper technicality of the learned Tribunal has resulted into the flaw in his award. It was established that the deceased had definitely met with the accident involving two vehicles. It was also proved that the accident was between the tractor trolley and the motor cycle on which the deceased was plying. The technical defect of pleading should not have been made the basis of rejection of the claim petition. I am supported in my view by the decision of Apex Court in the case of **Gurdeep Singh v. Bhim Singh, (2013) 11 SCC 507**, wherein provision of Section 173 of the 'Act' read with Section 96 of the Code of Civil Procedure, 1908 will permit this court to

*reverse the perverse findings reached by the tribunal. The Apex Court decisions in **Sharanmma V. North-East Karnataka RTC, (2013) 11 SCC 517.** The judgment in **DulcinaFernandes V. Joaquim Xavier, First Appeal No. 216 of 2004, decided on 14.11.2008** with also help the claimants. Therefore also the appeal will have to succeed.”*

13. I am unable to accept the submission of Id advocate appearing on behalf of Insurance Company that the petition has been rightly rejected as there was no mention of the number of the vehicle in the FIR and that the deposition of witness was also sketching.

14. The F.I.R. was lodged promptly though the number of the vehicle was not mentioned later on during the investigation it was found that the vehicle was involved in the accident. The charge-sheet was laid which has not been doubted or challenged by anybody. Written statement has been filed by owner accepted that he has sold the vehicle. There is no denial of accident. The witness who has filed the charge-sheet has been extensively cross examined by the advocate for the Insurance Company and nothing could be made out that it was a planted vehicle. The facts go to prove that had it been a planted vehicle, the owner would not have taken such a stand that his vehicle was sold long back which shows that he has been rightly charge-sheeted. The newly impleaded owner has not even appeared before the Tribunal or before this Court which goes to show that the finding of fact of the Tribunal requires to be upturned. I am supported in my view by the decision of the Supreme Court in **Mangla Ram Versus Oriental Insurance Company Limited and others, Laws(SC) (2018) 49** and also in the case of **Sunita and Others Versus Rajasthan State Road Corporation and another, 2019(1) TAC 710 (SC)** relied by counsel for appellant, wherein the Apex Court has reiterated that

trappings of civil litigation be not strictly adhered to. I am fortified in my view by the decision of the Apex Court in **Vimla Devi and others Vs. National Insurance Company Limited and another, (2019) 2 SCC 18.**

15. Appeal is partly allowed.

16. The judgment and decree shall stand quashed and set aside. The record be sent back to the Tribunal for deciding on the other issues which shall be decided on or before 31st May, 2021 after affording opportunity of hearing to all.

Order Date :- 26.11.2020

Mukesh