

Yashpaul Devgan Vs. Rajender Kumar and ors.

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Court : Delhi

Decided On : Nov-18-2013

Judge : Rajiv Sahai Endlaw

Appellant : Yashpaul Devgan

Respondent : Rajender Kumar and ors.

Advocate for Pet/Ap. : Mr. K.K. Jha

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

18. h November, 2013 % + RFA5162003 YASHPAUL DEVGAN Through: Appellant Mr. K.K. Jha, Adv. along with appellant. versus RAJENDER KUMAR & ORS. Respondents Through: None. CORAM :HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J.

CM No.18163/2013 (for restoration of the appeal dismissed in default on 23rd January, 2013) and CM No.18164/2013 (for condonation of 270 days delay in applying therefor).

1. The appeal was on 23rd January, 2013 dismissed in default of appearance of the appellant. This application for restoration has been filed with an application for condonation of delay of 270 days in applying therefor.

2. There is absolutely no reason stated as to why the appellant/his counsel did not watch the matter in the cause list of this Court where it was admittedly listed at item no.29. There is also no reason stated as to why the appellant/his counsel did not watch the list from 23rd January, 2013 till now. An application for restoration cannot be filed whenever the appellant/his counsel may choose to check the list.

3. Moreover the appeal was earlier also on several occasions dismissed in default of appearance of the appellant and the appellant has even otherwise been lax in prosecuting the appeal and the file is full of applications for taking steps for service of the respondent each time.

4. To check the seriousness of the appellant to pursue the appeal now, the counsel for the appellant was asked to argue on the merits of the appeal.

5. As expected he said that his is not ready. The same demonstrates the state of readiness of the appeal. The counsel for the appellant/plaintiff at that stage stated that the matter may be passed over and he will address on the merits of the appeal. The matter was accordingly passed over and the counsel for the appellant/plaintiff has been heard on the merits of the appeal. Even though the appeal has been pending for the more than ten years and was entertained, being a first appeal, but after hearing the counsel for the appellant/plaintiff, no merit is found in the appeal. No purpose would thus be served in issuing notice of this application to the respondents/defendants, whose service on earlier occasions has also been effected with considerable difficulty. To avoid further delays and since this Court is already hearing appeals of the year 2005, and to enable dismissal on merits of the appeal, the applications are allowed; for the reasons stated, the delay in applying for restoration is condoned and the appeal restored to its original position. RFA5162003.

6. The appeal impugns the judgment and decree dated 12th May, 2003 of the Court of the Addl. District Judge of dismissal as not maintainable of Suit No.585/2001 filed by the appellant/plaintiff.

7. The said suit was filed by the appellant for recovery of Rs.5 lacs jointly and severally from the four respondents/defendants, pleading that:(a). that the

appellant/plaintiff was a Government servant; on 26th May, 1998 while returning to his home after office hours he boarded bus of route No.680 (Blue Line) which was registered as DL1 8557 and owned by the respondent/defendant no.1; (b). that the said bus was driven by the respondent/defendant no.2 Shri Kundan Kumar Jha and the respondent/defendant no.3 Shri Ajay Singh was its bus conductor; the bus was insured with the respondent no.4 Oriental Insurance Co. Ltd.; (c). that Shri Nirmal Singh who was travelling with the appellant/plaintiff paid Rs.5 to the respondent no.3 Conductor for purchasing two tickets i.e. for Shri Nirmal Singh and the appellant/plaintiff; that even though the fare was Rs.2 per ticket but the respondent no.3 Conductor demanded Rs.3 per ticket; that the appellant/plaintiff and the said Shri Nirmal Singh told the respondent no.3 Conductor that he was charging more than due; (d). at this the respondent no.3 Conductor abused Shri Nirmal Singh and on which the appellant/plaintiff along with other passengers intervened and hot words were exchanged between the said Shri Nirmal Singh and the respondent no.3 Conductor; (e). that the respondent/defendant no.2 who was driving the bus also spoke loudly and gave abuses and was driving the bus rashly and negligently; (f). that the moment the bus was turning to the crossing near Rail Museum Circle, Shanti Path, Chanakya Puri, the respondent no.3 Conductor held the arm of the appellant/plaintiff and pushed the appellant/plaintiff out from the front gate of the running bus; (g). that the respondent/defendant no.2 however continued to drive the bus at a high speed; (h). that the passengers however forced the respondent/defendant no.2 to stop the bus at a distance of about 100 yards from the place where the appellant/plaintiff had fallen and the respondent/defendant No.2 ran away from the spot; (i). that the appellant/plaintiff had suffered serious injuries and was taken to hospital; and, (j). that the respondents/defendants no.2&3 driver and conductor were arrested and a case under Section 279 /337 of the IPC was registered against them which was later on converted into Section 308 IPC. Accordingly, the suit for recovery of compensation/damages jointly and severally from the respondent/defendants was filed.

8. The suit was inter alia contested by the respondents/defendants no.2,3&4 by filing separate written statements contending that the appellant/plaintiff had concealed having filed a similar claim before the Motor Accident Claims Tribunal

(MACT) and the suit from which this appeal arises being thus barred under Section 175 of the Motor Vehicles Act, 1988. The respondent/defendant no.3 Conductor in addition pleaded that he was neither the conductor nor the employee of the owner of the bus and was running a shop in the name and style of Chanakya General Store at 21, Yashwant Place Market, Chanakya Puri, New Delhi and was just a passenger in the bus and a mere spectator of the quarrel between the appellant/plaintiff and the conductor.

9. The impugned judgment records that it was informed to the Court on 17th October, 2002 that the respondent no.3 Conductor Shri Ajay Singh had been convicted under Section 308 of the IPC and the appeal preferred by him had also been dismissed by this Court and the respondent no.3/defendant Conductor had been sentenced to undergo rigorous imprisonment for a period of four years.

10. The impugned judgment further records that the following preliminary issue was framed in the suit:

Whether the suit is maintainable in the Civil Court?.

11. issue The learned Addl. District Judge has decided the said preliminary against the appellant/plaintiff and dismissed the suit finding/observing/holding:(i). that the judgment of conviction of the respondent no.3 Conductor under Section 308 of the IPC and dismissal of appeal thereagainst clinches the issue as to the nature of the incident, showing that the respondent/defendant no.3 Conductor had attempted to commit culpable homicide for which he had been convicted; (ii). thus the question of rash and negligent driving on the part of the respondent/defendant no.2 Driver stood ruled out and therefore he was not a necessary party to the suit; (iii). similarly the respondent/defendant no.1 owner of the bus could also not be a necessary or proper party as no role had been assigned to him in the incident and he was also thus not a necessary or proper party to the suit; (iv). that the respondent/defendant no.4 Insurance Company was also not a necessary or a proper party as it had not and could not have insured the criminal act of any person; (v). that the contention of the appellant/plaintiff that the respondent/defendant no.1 owner was vicariously liable for the acts of his employees respondents/defendants no.2&3 Driver and Conductor had no merit as

the concept of vicarious liability is in the domain of tort and does not extend to crime; liability for a criminal act cannot be fastened vicariously; (vi). that in fact the respondents/defendants no.1,2&4 were not even made accused or challaned under Section 308 of the IPC and therefore cannot be a party in a Civil Court for that offence; (vii). the suit against the respondent/defendants no.1,2&4 was thus not maintainable; (viii). for a criminal offence the compensation could have been awarded to the appellant/plaintiff under Section 357 of the Cr.PC by the Court trying the accused under Section 308 IPC and there is no power with the Civil Court to grant such compensation as offence under Section 308 IPC is not a civil wrong; (ix). the Civil Court can grant compensation or damages for a civil wrong and not for the criminal act; (x). Section 308 IPC is alien to the domain of tort and therefore no claim can be based on that in a Civil Court; and, (xi). thus the suit was respondent/defendant not no.3 maintainable Conductor also against the because the aggrieved party in a criminal case is the State and not the individual who may have set the machinery of the State into motion. the suit was accordingly held to be misconceived and dismissed.

12. The appeal came up first before this Court on 8th July, 2003 when none appeared for the appellant/plaintiff and the appeal was dismissed in default. The appellant/plaintiff applied for restoration which was allowed. Notice of the appeal was issued. The respondent/defendant no.1 owner failed to appear before this Court also despite service. The order dated 5th October, 2006 records that the respondent/defendant no.3 Conductor was reported to have been released from the jail on 24th February, 2005. The respondent/defendant no.3 Conductor was permitted to be served by publication and failed to appear. The appeal was on 13th November, 2007 admitted for hearing. On 28th April, 2010 the appellant/plaintiff failed to appear and the appeal was dismissed for non-prosecution. The appellant/plaintiff applied for restoration but none appeared and the application was dismissed. Yet another application was filed for restoration and which was allowed on 28th March, 2011. The appeal was again on 23rd January, 2013 as aforesaid dismissed in default.

13. It was in the light of the aforesaid conduct of the appellant/plaintiff that instead of mechanically issuing notice of the application for restoration, it was felt that it

should at least be ascertained whether there was any merit in the appeal.

14. The learned Addl. District Judge has in the impugned judgment certainly misdirected himself.

15. The preliminary issue was framed to adjudicate the maintainability of the suit in the Civil Court in the light of the plea in the written statement of the respondents/defendants no.2 to 4, of the claim therein being barred by Section 175 of the Motor Vehicles Act and which question the learned Addl. District Judge has failed to address. However the counsel for the appellant/plaintiff is also unable to say anything in this respect. He is unable to even tell the outcome of the claim filed by the appellant/plaintiff before the MACT.

16. In my view, the question is no longer res integra.

17. Section 165 of the Motor Vehicles Act provides for the constitution of the MACTs for the purpose of adjudicating upon claims for compensation in respect of accidents involving death of or bodily injury to persons, arising out of the use of motor vehicles. Section 166 enables an application for compensation arising out of an accident of the nature specified in Section 165 to be made inter alia by the person who has sustained the injury. Section 175 provides that where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. The legislative scheme thus is that the claims of the nature specified in Section 165 are to be adjudicated by the Claims Tribunal only and the jurisdiction of the Civil Court to entertain such claims has been barred. It is not in dispute that a Claim Tribunal has been constituted for the subject area; in fact the appellant/plaintiff is informed to have simultaneously with the filing of the suit from which this appeal arises, also invoked the jurisdiction of the MACT of the area.

18. The only question for adjudication thus is, whether the claim of the appellant/plaintiff for compensation for injuries suffered on account of being thrown/pushed out from the moving bus by the conductor thereof, is within the domain of Section 165 of the Motor Vehicles Act.

19. The Supreme Court in Shivaji Dayanu Patil Vs. Vatschala Uttam More (1991) 3 SCC530 held that the word use in the context of motor vehicles has a wider connotation than the expression caused by and that the causal relationship between the use of the motor vehicle and the accident resulting in injury is not required to be direct and proximate and it can be less immediate. It was yet further held that as long as the accident is connected with the use of the motor vehicle, the MACT would have jurisdiction. Accordingly the Tribunal was held to have jurisdiction, where the petrol tanker went off the road and fell from the highway leading to leakage of petrol which caused an explosion, for entertaining the claims for injury to the persons who had sustained injuries on account of being at a place where the explosion had occurred.

20. A claim for compensation by the heirs of an auto rickshaw driver who was murdered by the passengers he was ferrying, was also in Rita Devi Vs. New India Assurance Co. Ltd. (2000) 5 SCC113 held to be within the jurisdiction of the MACT. It was held that though murder is felonious act but since the murder caused in the incident was related to the use of a motor vehicle, the Claims Tribunal would have jurisdiction.

21. Similarly in Samir Chanda Vs. Managing Director, Assam State Transport Corporation (1998) 6 SCC605 the claims for compensation in respect of injuries suffered due to bomb blast inside the vehicle were held to be falling within the jurisdiction of MACT.

22. In Kaushnuma Begum Vs. New India Assurance Co. Ltd. (2001) 2 SCC9 the Supreme Court further clarified that even if there were to be no negligence on the part of the driver or owner of the motor vehicle but accident happened while the vehicle was in use, the injured would be entitled to get compensation from the MACT.

23. The Jammu & Kashmir High Court in National Insurance Co. Ltd. Vs. Shiv Dutt Sharma 2004 ACJ2049 held the claims for compensation on account of the terrorists gunning down passengers in a bus to be entertainable by the MACT.

24. This Court also in DTC Vs. Meena Kumari III (2010) ACC72 held the claims for compensation on account of a bomb blast in a DTC bus to be within the jurisdiction of the MACT.

25. Recently also this Court in National Insurance Co. Ltd. Vs. Munesh Devi (2012) 189 DLT725 after noticing all the aforesaid held a claim for compensation on account of death due to electrocution by coming in the contact with an overhead electric wire while standing on a parked vehicle, to be entertainable by MACT.

26. Applying the aforesaid principles, even though the injury claimed to have been suffered by the appellant/plaintiff is not caused by any vehicle, since the claim is of injury on being pushed/thrown out of the motor vehicle, the claim would be arising out of the use of the motor vehicle under within the meaning of Section 165 of the Motor Vehicles Act and the jurisdiction of the Civil Court would be barred.

27. Thus the result reached by the learned Addl. District Judge in the impugned judgment, of the Civil Court having no jurisdiction to entertain the claim of the appellant/plaintiff for compensation, though for wrong reasons, has but to be upheld.

28. Resultantly the appeal is dismissed.

29. No order as to costs. Decree sheet be drawn up. RAJIV SAHAI ENDLAW, J.

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