

Vimla Devi . Vs. The National Insurance Company Limited .

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Court : Supreme Court of India

Decided On : Nov-16-2018

Judge : Hon'Ble Mr. Justice Abhay Manohar Sapre, Hon'Ble Ms. Justice Indu Malhotra

Appeal No. : 16124 / 2016

Appellant : Vimla Devi .

Respondent : The National Insurance Company Limited .

Advocate for Pet/Ap. : Ansar Ahmad Chaudhary

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.11042 OF2018(Arising out of S.L.P.(C) No.17321 of 2016) Vimla Devi & Ors. .Appellant(s) VERSUS National Insurance Company Limited & Ors. .Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by the claimants against the final judgment and order dated 23.03.2015¹ passed by the High Court of Judicature for Rajasthan Bench at Jaipur in SBCMA No.1739 of 2007 whereby the High Court dismissed the appeal filed by the claimants and affirmed the award dated 05.12.2005 passed by the MACT Chomu (Jaipur) in MAC Case No.48/2005.

3. In order to appreciate the issues arising in the case, it is necessary to set out the relevant facts hereinbelow.

4. The appellants are the claimants/plaintiffs whereas the respondents are the non applicants/defendants in the claim petition out of which this appeal arises.

5. One Rajendra Prasad aged around 25 years was travelling in the passenger Bus bearing No.RJ 07P2151 as its bona fide passenger on 03.06.2003 for going to a place called "Chomu". When the Bus reached near Police Station, Chomu, a Truck 2 bearing No.HR55A7729, which was going towards Jaipur from Chomu came on a high speed and dashed against Bus. The impact of dash against the Bus was so violent that Rajendra Prasad, who was sitting inside the Bus, sustained grievous injuries resulting in his instant death. This led to filing of the FIR No.214/2003 in Police Station, Chomu.

6. It is this incident, which gave rise to initiation of two legal proceedings, namely, criminal and civil. So far as the criminal proceedings are concerned, a charge sheet (1/2003) was filed by the State against the driver of the offending Truck in the Court of Magistrate under Section 304A of the Indian Penal Code, 1860 (in short, IPC).

7. So far as the civil proceedings are concerned with which we are concerned in this appeal were filed by the appellants herein (claimants), who are the wife and the two minor children of the 3 deceased, against the Insurance Company (respondent No.1), driver (respondent No.2) and the owner (respondent No.3) of the offending Truck under Section 166 of the Motor Vehicles Act (hereinafter referred to as the Act) before the Motor Accident Compensation Tribunal, Chomu claiming therein to award reasonable compensation to them for the loss sustained on account of untimely death of Rajendra Prasad their only bread earner in the

family.

8. The appellants along with their claim petition filed all those documents, which were filed by the State in the criminal proceedings against the driver, such as FIR, charge sheet, site plan, post mortem report of the deceased, registration of Truck No.HR A7729, insurance coverage, mechanical inspection report, copy of notice issued to the owner under Section 133 of the Act etc. 4 9. So far as the driver and owner of the offending Truck are concerned, since inception both remained ex parte in the proceedings. So far as the Insurance Company (insurer) is concerned, they alone entered appearance and filed the written statement. The Insurance Company, however, contended inter alia in their written statement that firstly, the owner of the Truck did not give any intimation to the Insurance Company; Secondly, the owner and the driver of the bus were not impleaded as party in the proceedings; and Thirdly, the owner of the offending Truck did not send a copy of the driving license of the driver to the Insurance Company to enable them to make an inquiry about its genuineness (see Para 3 of the award).

10. The claimants examined three witnesses in support of their case. The Insurance Company did not examine any witness. By award dated 5 05.12.2005, the Tribunal dismissed the appellants claim petition. It was held that the claimants failed to prove the accident including involvement of offending Truck, which caused death of Rajendra Prasad. It was held that though the claimants filed the documents but since those documents were not exhibited, the Insurance Company could not cross examine the claimants witnesses on the documents. In short, the Tribunal held that the claimants failed to prove the accident for want of evidence and the one adduced was not exhibited and hence was of no use. These were basically the two findings on which the claim petition was dismissed.

11. The claimants felt aggrieved and filed appeal in the High Court for Rajasthan Bench at Jaipur. By impugned order, the High Court dismissed the appeal, which has given rise to filing of the present 6 appeal by way of special leave by the claimants in this Court.

12. Heard Mr. Maruf Khan, learned counsel for the appellants and Ms. Meenakshi Midha, learned senior counsel for respondent No.1.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside the impugned order allow the claim petition filed by the appellants (claimants) and award reasonable compensation to the appellants as indicated infra.

14. In our considered opinion, the approach, reasoning and the conclusion of the Tribunal and the High Court for dismissing the appellants claim petition/appeal was not in accordance with law inasmuch as both did not deal with any issue arising in the case. The High Court while dismissing the appeal simply affirmed the award of the Tribunal without assigning any reason.

15. Before we examine the factual matrix of the case at hand, it is apposite to take note of the provisions of the Act, which have relevance while deciding the claim petition.

16. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident. 8 17. Section 158 of the Act casts a duty on a person driving a motor vehicle to produce certain certificates, driving licence and permit on being required by a police officer to do so in relation to the use of the vehicle. Subsection (6), which was added by way of amendment in 1994 to Section 158 casts a duty on the officer incharge of the police station to forward a copy of the information (FIR)/report regarding any accident involving death or bodily injury to any person within 30 days from the date of information to the Claim Tribunal having jurisdiction and also send one copy to the concerned insurer. This subsection also casts a duty on the owner of the offending vehicle, if a copy of the information is made available to him, to forward the same to the Claims Tribunal and the insurer of the vehicle. 9 18. The Claims Tribunal is empowered to treat the report of the accident on its receipt as if it is an application made by the claimant for award of the compensation to him under the

Act by virtue of Section 166 (4) of the Act and thus has jurisdiction to decide such application on merits in accordance with law.

19. The object of Section 158(6) read with Section 166(4) of the Act is essentially to reduce the period of pendency of claim case and quicken the process of determination of compensation amount by making it mandatory for registration of motor accident claim within one month from the date of receipt of FIR of the accident without the claimants having to file a claim petition. (See *Jai Prakash vs. National Insurance Co. Ltd.*, 2010 (2) SCC607. 10 20. There are three Sections, which empower the Claims Tribunal to award compensation to the claimant, viz., Section 140, Section 163A and Section 166 of the Act.

21. So far as Section 140 of the Act is concerned, it deals with the cases for award of compensation based on the principle of no fault liability.

22. So far as Section 163A of the Act is concerned, it deals with special provisions as to payment of compensation and is based on structured formula as specified in Second Schedule appended to the Act.

23. While claiming compensation payable under Section 140 and Section 163A of the Act, the claimant is not required to prove any wrongful act, neglect or default of the person concerned against whom the claim is made by virtue of Section 140 (4) and Section 163A (2) of the Act. 11 24. So far as Section 166 of the Act is concerned, it also deals with payment of compensation. Section 168 of the Act deals with award of the Claims Tribunal whereas Section 169 of the Act provides procedure and powers of the Claims Tribunal. As has been held by this Court (Three Judge Bench), the claim petition filed under the Act is neither a suit nor an adversarial lis in the traditional sense but it is a proceeding in terms of and regulated by the provisions of Chapter XII of the Act, which is a complete Code in itself. (See *United India Insurance Company Ltd. vs Shila Datta & Ors.*, 2011 (10) SCC509.

25. Keeping in view the aforementioned principle of law when we examine the facts of the case at hand, we are of the considered opinion that the Claims Tribunal and the High Court were not 12 justified in dismissing the appellants claim

petition. In our view, the appellants claim petition ought to have been allowed for awarding reasonable compensation to the appellants in accordance with law. This we say for the following reasons.

26. First, the appellants had adduced sufficient evidence to prove the accident and the rash and negligent driving of the driver of the offending vehicle, which resulted in death of Rajendra Prasad.

27. Second, the appellants filed material documents to prove the factum of the accident and the persons involved therein.

28. Third, the documents clearly established the identity of the Truck involved in the accident, the identity of the driver driving the truck, the identity of the owner of the Truck, the name of the insurer of the offending Truck, the period of coverage of insurance of the Truck, the details of the lodging of 13 FIR in the concerned police station in relation to the accident.

29. In our view, what more documents could be filed than the documents filed by the appellants to prove the factum of the accident and the persons involved therein.

30. Fourth, so far as the driver and owner of the Truck were concerned, both remained ex parte since inception and, therefore, neither contested the appellants claim petition nor entered into the witness box to rebut the allegations of the appellants made in the claim petition and the evidence. An adverse inference against both could be drawn.

31. Fifth, so far as the Insurance Company is concerned, they also did not examine any witness to rebut the appellants evidence. The Insurance Company could have adduced evidence by 14 examining the driver of the offending Truck as their witness but it was not done.

32. Sixth, on the other hand, the appellants examined three witnesses and thereby discharged their initial burden to prove the case.

33. Seventh, if the Court did not exhibit the documents despite the appellants referring them at the time of recording evidence then in such event, the appellants cannot be denied of their right to claim the compensation on such ground. In our opinion, it was nothing but a procedural lapse, which could not be made basis to reject the claim petition. It was more so when the appellants adduced oral and documentary evidence to prove their case and the respondents did nothing to counter them.

34. In the light of the aforementioned seven reasons, we are of the considered opinion that the 15 appellants were able to prove the factum of the accident so also the factum of rash and negligent act of the driver causing the accident. It is also proved that the offending Truck was insured with respondent No.1 at the time of accident and was owned by respondent No.3.

35. This takes us to consider the next question as to how much compensation the appellants are entitled to claim for the death of their bread earner Rajendra Prasad.

36. It has come in the evidence that the deceased was around 25 years of age and left behind him his wife and two minor children. It has also come in evidence that he was earning around Rs.10,000/ per month.

37. Having regard to all the facts and circumstances of the case, we consider it proper to take Rs.5000/ to be his monthly income. 16 Deducting 1/3rd towards personal expenses, we get around Rs.3300/. The appellants are also entitled to claim loss of future prospect at the rate of 40%, which works out to Rs.1320/ thus making a total income of Rs.4620/. Applying the multiplier of 18, we get $\text{Rs.}4620 \times 12 \times 18 = \text{Rs.}9,97,920/$.

38. To the aforementioned amount, we add and accordingly award Rs.15,000/ for funeral expenses, Rs.15,000/ for loss of the estate and Rs.1,00,000/ for loss of spousal and parental consortium. In this way, the appellants (claimants) are held entitled to claim Rs.11,27,920/ by way of compensation from the respondents jointly and severally. The amount awarded by this Court shall carry interest at the rate of 6% p.a. from the date of claim petition till realization.

39. In view of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set 17 aside. The appellants claim petition is allowed in part as indicated above against the respondents jointly and severally.

40. Respondent No.1 Insurance Company is directed to deposit the awarded sum within 3 months with the Claims Tribunal for being paid to the appellants after proper verification.J.

[ABHAY MANOHAR SAPRE].J.

[INDU MALHOTRA]. New Delhi; November 16, 2018 18

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