

Chander Kala and ors. Vs. Murari Lal Singhal and ors.

Chander Kala and ors. Vs. Murari Lal Singhal and ors.

SooperKanoon Citation : sooperkanoon.com/475933

Court : Allahabad

Decided On : Oct-29-1984

Reported in : 1(1985)ACC208

Judge : A. Banerji and ;R.K. Shukla, JJ.

Appellant : Chander Kala and ors.

Respondent : Murari Lal Singhal and ors.

Advocate for Pet/Ap. : Mr. L.P. Naithani

Judgement :

A. Banerji, J.

1. The claimants, widow, son and a minor daughter, have filed this appeal against the dismissal of their claim petition made under Section 110-A of the Motor Vehicles Act, by the Motor Vehicles claims Tribunal, Dehradun. The Claimants had prayed for an award in the sum of Rs. 150,000/- as compensation, on account of the death of Shri Narain Das Arora, against the owner, driver and the Insurer M/s New India Assurance Co. Ltd.

2. The Claimants alleged in the claims petition that Shri Narain Das Arora, husband of appellant No. 1, Smt. Chandra Kala Devi and the father of the other appellants, was going on a scooter on the Chakrata Road, Dehradun, a busy

locality, at about 11 in the morning of 4th October, 1976. The motor vehicle No. USM 846, which was proceeding ahead of the scooter driven by Shri Narain Das Arora, was being driven rashly and was suddenly stopped and the driver flung open his door, with the result that the scooter collided with the car and the scooterist fell down on the road and received injury on the head. The driver of the car, moved away the scooter from the middle of the road and made his exit from the spot. The injured person was removed to a Clinic nearby and was later taken to a Nursing Home, where he succumbed to his injuries three days later.

3. The defence of the driver and the owner of the motor car USM 846, was more or less similar. They denied that the accident was caused in the matter alleged. The driver's stand was that he was driving the vehicle at a very moderate speed on this extremely busy road in the city of Dehradun. He parked the car to the extreme left of the road and went to the Clinic of Dr.' Mrs. Sushila Gupta, to consult her for his wife. His wife remained sitting in the car during his absence, which was for a very short duration. According to his case, some person, who was driving a scooter came from behind the car, struck against the right side mud-guard of the car and fell down. Some passers-by helped him in getting up. When he came back from the Clinic he did not find the scooter or its driver. His car was completely static and immobile when the scooter struck against it. Consequently, he was not at all liable for the accident. There was neither any rash or negligent act on his part. The claim petition was liable to be dismissed. It was further pleaded that the First Information Report lodged with the Police made no mention of the car No. USM 846. It was further stated that the claimants had tried to implicate the respondents 1 and 2 in a criminal case but did not succeed and the First Information Report was followed by another police report in which an attempt was made to improve the earlier version given in first information report. They prayed for dismissal of the claim petition with special costs.

4. New India Assurance Company Ltd., 25 Rajpur Road, Dehradun was impleaded as respondent No. 4 and its Head Office situated at 87 Mahatma Road, Fort, Bombay was impleaded as respondent No. 3. In their written statements they denied the case of the claimants except that Car No. USM 846 was insured with the answering respondents. No notice was served on the answering respondents

and it was further pleaded that the petitioners were not dependent upon the deceased and the amount claimed was arbitrary, excessive and without any basis. It was further stated that the accident was not reported immediately to the answering respondents and as such they are not liable to pay any compensation.

5. The Claims Tribunal framed five issues. After considering the evidence the Tribunal held that the collision took place with the standing car, when the driver was in the Clinic and not with the door of the said Car and that there was no rashness or negligence on the part of the driver and the claimants are not entitled to be awarded any compensation. In answering issue No. 3, the Tribunal held that the scooter collided with the Car and Shri Narain Das Arora fell down. There was a fracture in the temporal and parietal bones with internal haemorrhage, which was the cause of the death. Consequently, the death of Narain Das Arora was caused by the accident. In regard to the question of damage caused to the claimants, the Tribunal held that even if the version of the claimants was accepted, it would be a case of contributory negligence and as such the total amount which could be awarded as damages was Rs. 36,500/-, but in view of the findings on issues 1 to 3 no amount was liable to be awarded to the claimants. Aggrieved the claimants have come up to this Court.

6. Mr. L.P. Naithani, learned Counsel for the appellants urged that the Tribunal had not considered the evidence in the case properly ; its assessment of the evidence was faulty and the findings arrived at by the Tribunal were arbitrary and incorrect. He further contended that the Tribunal had not considered that the driver of the vehicle had knowledge as to how the accident took place and the burden lay on him to explain the same and the Tribunal had not considered this aspect of the matter at all. The principle of *res ipsa loquitur* was thus attracted. The wife of respondent No. 2 who was sitting in the Car was not examined as a witness in this case. She would have been the best person to do so. He therefore urged that it was a fit case in which the order of the Tribunal should be set aside and the case remanded to the Tribunal for a fresh decision in accordance with law.

7. Learned Counsel for the respondents contended that the findings arrived at by the Tribunal were based on an appreciation of evidence and were in accordance

with law. There was no mistake in the approach or in the finding. It was further contended that the principle of *res ipsa loquitur* was not at all attracted in the case. Where both parties lead evidence the principle is not attracted and the Tribunal had not committed any error in this regard. Learned Counsel for the Insurer also supported the stand of the owner and the driver of the vehicle. Learned Counsel for the respondents took us through the evidence and cited cases in support of their respective contentions.

8. Having considered the respective contentions and perused the material on record carefully we have no manner of doubt that an accident took place between the scooter of the deceased and the static vehicle of the respondents 1 and 2 on the date and the time mentioned in the Claims Petition. It is not discernible from the evidence on record as to what was the actual course of the accident. If there was a vehicle which was standing still on the extreme left of the road, a vehicle coming from behind is supposed to take necessary precaution to avoid coming in contact with the first mentioned vehicle by driving carefully and avoiding a contact. The theory that the car was suddenly stopped and the driver's door was suddenly flung open which caused the accident is wholly unbelievable, the reason being that the scooter made an impact on the rear right fender of the vehicle and then made a mark on the rear right door and also on the front right door. The fact that the vehicle of the respondents No. 1 and 2 did receive straight line scratching mark on the right rear fender, right rear door and a part of the right front door is indicative of the fact that the scooterist was forced by some thing also to graze past the static vehicle and it ultimately lost its balance and fell down. The reason why the scooterist was forced to graze past the body of the static car is not there in evidence on the record. It may be that some other vehicle was forcing it to come so close to the static vehicle, It could be a vehicle approaching the scooter from the front or it could be due to another vehicle pressing on the scooterist from behind, or there could be some other obstacle on the path of the scooterist. There is no plausible reason as to why a scooter driver will not be able to steer clear of a static vehicle on the road. The very fact that it makes a contact with the right rear fender of the static vehicle is indicative of the fact that the accident was not caused by the alleged opening of the right front door but due to something else.

9. In our opinion the theory set up by the claimants regarding the accident having taken place due to the opening of the door had to be discarded. If the door had been the cause of the accident there would be some mark of impact on the left hand or shoulder of the deceased, for that would be the first limb which would be coming in contact with the door. Secondly, the nature of the injury suffered by the deceased on the head was a horizontal cut whereas if the upper part of the door had struck the head of the scooterist there would have been only a verticle injury. Thirdly, there is no evidence to show that there was any mark (scratch mark of chipping of paint or mark of impact) in the interior part of the door, even at its edge to warrant an inference that the door was the cause of the accident. Fourthly, if the opening of the door was the cause of the accident, then how come there was a mark on the right front door on the outer side. If the scooter collided with the open door there could not be a scratch mark on the exterior part of the open door. Thus the theory of the right front door of the vehicle being the cause of the accident has to be ruled out completely. Once we come to the conclusion that the respondents' vehicle was static and was parked at the extreme left of the road and the door of the vehicle was not the cause of the accident, then it was the scooterist's error of judgment or he may have been forced into such a situation by some other vehicle or object as discussed above. In any event we are satisfied that the finding on the point by the Tribunal is correct and is accordingly upheld.

10. On behalf of the claimants there is no reliable evidence at all. The only person, Sri Kunwar Bhan, a Halwai has deposed about the accident but it is evident from what he had deposed that he had not really seen the accident. He had arrived at the spot after the accident had taken place. His version that the car stopped suddenly and the driver opened his driving side door abruptly to cause the accident is not believable and we have indicated the reasons therefor. There is no other evidence on behalf of the claimants to prove satisfactorily as to how the accident took place or in what respect the respondents were liable. In the absence of cogent evidence it is not possible for a court to draw inference which are not warranted., A court has to appreciate the evidence on the record in the prevailing circumstances. As analysis of the evidence in the light of the circumstances clearly shows that the claimants have miserably failed to establish the real cause of the accident.

11. One more aspect of the matter may now be considered. Learned Counsel for the appellants urged that the principle of *res ipsa loquitur* is attracted. He urged that there is evidence to show that the wife of the person who was driving the car was sitting in the said vehicle and she had seen the actual accident. Hers would be the best evidence on the point as to how the accident was actually caused but she has not been examined by the respondents. Learned Counsel then contended that when a particular matter was in the knowledge of the respondents and the best evidence had been withheld an inference should be drawn against the respondents. Shri M.M. Singhal, respondent No. 2, the driver of the vehicle, stated that his wife had accompanied him on this day in the car as they had gone to a clinic to get her examined by the lady doctor. According to Sri Singhal, she was sitting in the car while he went to make an enquiry about the lady doctor in her clinic. Therefore according to Sri Singhal his wife was sitting in the car when the accident took place. The claimants' witness P.W. 3 Kunwar Bhan has, however, categorically stated that there was no one else in the vehicle apart from the driver of the vehicle. That is the state of evidence on behalf of the claimants. However, we will proceed on the footing that the wife of Sri M.M. Singhal was sitting in the car.

12. The next question would be whether the wife of Sri M.M. Singhal had seen the accident i.e. how it happened and what caused the scooterist to go grazing past the body of the static car. Only two questions appear to have been asked in the cross-examination of the witness Sri M.M. Singhal. He stated that he had not heard the sound of the impact of the accident or any noise thereafter when he was inside the clinic but after he had sat in the car his wife had told him about the accident. She had told him that the scooterist collided with the car and then fell down and some people picked him up and had taken him away. He further stated in response to another question that he had not asked his wife about the scooterist nor had she said anything about him. There was no other question on behalf of the claimants to Sri M.M. Singhal. There was no suggestion even to Sri Singhal as to why his wife had not been produced if she had seen the accident. We are not impressed with this line of arguments.

13. The doctrine of *res ipsa loquitur* came up for consideration in *Scott v. London and St. Katherine Docks Co.* (1865)3 H&C; 596. Erle, C.H. observed :

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

Reference may also be made to the case of *Mela Ram v. Mohan Singh* 1978 ACJ 381 P and H. In this case their Lordships referred to the case of *Barkway v. South v. South: Wales Transport Co.* (1959)1 All E.R. 392. In this case the accident was caused on account of the bursting of a tyre of an omnibus. It was held that the doctrine of *res ipsa loquitur* was attracted. This doctrine, it was said, 'was no more than a rule of evidence affecting onus of proof of which the essence was more likely than not to have been caused by negligence, was by itself evidence of negligence. 'According to this, if in the ordinary course of things it was more likely than not that the accident was caused by negligence, the onus of proof would shift on the defendant to show that it was not caused by negligence.

14. Applying the above principle it was necessary for the claimants to show that there was reasonable evidence of negligence on the part of the driver of the vehicle. The case of the claimants that the car was abruptly stopped has not been made out. In this case the driver had parked the car to the extreme left of the road and gone inside the clinic. In car was in a static condition when the scooterist collided with it. This also repels the theory of the accident due to the abrupt opening of the driver's door without looking behind to the traffic on his right. We have considered the evidence and have come to the conclusion that the accident was not caused due to the opening of the door of the car. Thus the opening of the door was not the cause of the accident. Hence, the question of negligence does not arise. Further, had he abruptly opened the door and if it caused the accident then it would not have been possible for the driver to come out of the vehicle. Since the driver was in the clinic at the time of the accident, then the only inference to be drawn is that the driver's door was already closed, meaning

thereby that the accident did not take place in the manner alleged by the claimants.

15. What is required to be shown is that there was an absence of care on the part of the driver of the car, i.e. there was negligence on his part. In this case the car was in a static state. The scooterist, who is said to have been following the above car, was obviously coming from behind and had struck against the rear right fender of the vehicle, then the right rear door of the vehicle and the right front door and left a mark of impact on the body of the static vehicle before the scooterist probably fell down. This is a clear indication of the fact that the scooterist had not been able to drive his scooter with care and there was negligence on his part. The further fact that the car of the respondents was parked to the extreme left of the road is also relevant. Taking all these circumstances into consideration we have no hesitation in holding that the driver of the vehicle was not negligent and there was no rash act on his part. On the contrary, the scooterist who was going the same way as the car, but was behind the car, had not taken the required amount of care in driving his vehicle for he had collided with the static car and made impact on the right rear fender, right rear door and also on the right front door. Since the car was parked to the extreme left on the road and the scooterist collided with the car, as indicated above, and left mark of impact on the body of the car, it indicates that he probably lost control over his scooter. It therefore, indicates lack of care and which obviously amounts to negligence on his part. Why did the scooterist have to hit the right rear fender of the car is not explained by any evidence on behalf of the claimants. Their witness Sri Kunwar Bhan had not been able to explain this at all. It is too much to expect that the occupant of the car at the time of their impact would be able to see the accident for if she was sitting in the car whether in the front seat or in the rear seat she would be at the most watching the front and more likely to the left where the clinic was and where her husband had gone to meet the lady doctor. It would be too much to expect that she would be watching through the rear window to notice how the vehicles had approached their car and what made the scooterist to collide with the right side of the car.

16. There is another aspect of the matter viz., the claimants' case was, according to their witness Sri Kunwar Bhan, that apart from the driver there was no other person sitting in the car. Their case was not that the wife of the driver was sitting in the car. Consequently, the contention of the learned Counsel that the best evidence about the occurrence of the accident had been suppressed by the respondents is wholly untenable. Since the claimants' case was based on their own eye witness and that evidence failed to establish their case it is not now open to them to urge that the principle of *res ipsa loquitur* is attracted. Having considered the matter in depth we are of the opinion that there are no merits in this contention raised by the learned Counsel for these appellants.

17. It is indeed an unfortunate accident in which a scooterist lost his life. It is no doubt established that there was an accident involving the respondents' vehicle but the basis for making a claim against the owner of a vehicle under the Motor Vehicles Act is based upon the liability in torts. This liability can only be fastened on an owner of the vehicle provided there is negligence or want of care on his part. If there is no negligence or want of care on his part, no liability can be fastened. It is also well settled that if the owner of the insured vehicle is not liable in torts i.e. there being no negligence on his part, in that event no amount can be realised from the insurer as well. In the present case the claimants have not been able to bring home their case against the owner or in the driver of the vehicle insured with the respondents 3 and 4. They have not been able to prove any negligence or want of care on the part of the driver of the car. The injured person did not die immediately, he survived for more than two days. He was first removed to a clinic and then to a Nursing Home. There is no evidence forthcoming from these two places as to whether the scooterist had made any statement regarding the accident or that he remained unconscious and was unable to speak. There being two FIRs lodged in this case, which were at variance on certain vital aspects, it was imperative for the claimants to have led clear and cogent evidence that there was negligence and want of care on the part of the driver. On a consideration of the facts and circumstances of the case we are unable to hold that the accident was caused due to any negligence on the part of the driver of the vehicle. Consequently, we are further of the view that no liability in law arose against the driver or the owner of the vehicle and the insurer as well was not liable to pay any

compensation. We are in agreement with the findings arrived at by the Claims Tribunal.

18. In the result, the appeal fails and is dismissed, but in the circumstances of the case we direct the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com