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Court : Allahabad

Decided On : Jul-25-1991

Reported in : 1(1992)ACC166

Judge : V.K. Khanna and ;R.R.K. Trivedi, JJ.

Appellant : Bir Singh Rawat and ors.

Respondent : Virendra Kumar and anr.

Judgement :
ORDER

R.R.K. Trivedi, J.

1. This appeal arises out of an award dated 29.3.1979 passed by learned District Judge, Tehri Garhwal, in Motor Accident Claim petition No. 202 of 1974 where under Claim of the present appellants has been rejected. Beer Singh, appellant No. 1, father of one Kirti Singh along with widow of his son and two minor grand-sons and one minor grand-daughter filed Claim petition No. 202 of 1974 Claiming compensation on account of death of Kirti Singh, who was aged about 33 years at the time of death, in motor accident which took place on 16.4.1974, at about 1.00 P.M. on Rishikesh Tehri road at 21 mile near Fakot. The deceased Kirti Singh was travelling in unfortunate bus No. U.P.S. 5731 which met an accident at the aforesaid place and fell down in a sleep khud resulting in death of several persons and causing injuries to many others. The appellants claimed Rs. One lakh as

compensation on many counts.

2. Claim of the appellants was resisted by respondent's Nos. 1 and 2 on all possible legal and factual pleas. Respondent No. 1 Virendra Kumar denied even the fact that he is owner of the bus. It was also denied that Bir Singh died in that accident in which the aforesaid bus was involved. Both parties were given opportunity to adduce evidence. Appellants adduced oral and documentary evidence. In oral evidence they examined Bir Singh appellant and police head constable Pitamber Singh. Besides oral evidence following documents were also filed in support of the Claim:

(i) A copy of the death certificate dated 22.5.1974 issued by District Magistrate Tehri Garhwal (paper No. 26Ga) which reads as under:

Death Certificate

Certificate that Sri Kirti Singh Rawat contractor section order Sri Beer Singh Rawat, Rule order Village Raunlya Patti Bhadura, Tahsil Pratapnagar, District Tehri Garhwal, died on 16.4.1974 in Motor Accident Bus No. U.P.S. 5731 between Agrakhal Nagni.

Dated Narendra nagar.May 22, 1974. (S.S. Pangtey)District Magistrate,Tehri Garhwal.(ii) A copy of the F.I.R. registered as Report No. 17 in G.D. dated 16.4.1974 at Police Station Narendra Nagar, district Tehri Garhwal (Ex.IV).

(iii) A list of persons who died in the accident and were recognized and the bodies were handed over for cremation (EX.V). In this list at serial No. 10, theentryis--'Kirti Singh Rawat, son of Sri Beer Singh Rawat, Sakin Rauniya, at present Adarsh Gram Rishikesh', This list mentions names of 25 persons who died in that accident

(iv) Three assessment orders from Income Tax Department for the years 1973-74, 1974-75 and 1975-76 in which Kirti Singh has been shown as assessee. These three documents have been marked as Exs. I, II, and III.

3. On behalf of respondents it appears that only a copy of the policy was filed by respondent No. 2, which has been marked as Ex. B-1. It appears from therefore

that oral evidence was not adduced by the respondents.

4. The learned Tribunal, however, rejected the claim of appellants merely on the ground that the claimants failed to establish that Kirti Singh deceased died in the accident in which aforesaid bus No. U.P.S. 5731 was involved. It has further been said that as death of Kirti Singh in the accident could not be established, it was not necessary to record any finding as to whether the vehicle was driven rashly and negligently at the time of the accident. It has also been said simultaneously that there is no such evidence on record on the basis of which it may be inferred that the vehicle was driven rashly and negligently. So far as the amount of compensation is concerned, it has been said by the learned Tribunal that even if the amount of compensation is awarded it would have been offset against the acceleration of the estate in their favour.

5. We have heard learned Counsel for the appellants and the learned Counsel for the respondents. In our opinion, the award of the learned Tribunal rejecting the claim of appellants could not be accepted. We have no hesitation in saying that the learned Tribunal took a very harsh view of the matter by saying that appellants failed to establish that Kirti Singh died in the aforesaid accident. The appellants filed death certificate issued by the District Magistrate, Tehri. This document though has not been exhibited, remained uncontroverted. Respondents did not adduce any evidence oral or documentary disputing the correctness of this certificate. This document (paper No. 26Ga) fully established that Kirti Singh had died in the accident. Another most crucial documents on record are the F.I.R. (Ex. IV) and a list of those who died in the accident in which it is specifically mentioned that the bodies were recognized and were handed over for cremation. In this list name of Kirti Singh deceased with father's name and address has been specifically mentioned. Both F.I.R. and the list were approved by the head constable Pitambar Singh. Learned Tribunal has rejected these documents on the ground that Pitambar Singh had no personal knowledge. This is a strange reasoning given by the learned Tribunal. Both the documents (Exs. IV and V) were prepared in discharge of official duty by the Station Officer She Raj Singh Bhadauriya. Head Constable has proved his handwriting and has filed an extract from General Diary and also a certified copy of the list of persons who died in the

accident. Beer Singh (P.W. 1) has stated on oath that his son died in the above accident. As father he could be expected to know where and how his son has died. There was no legal and valid reason to discard this part of the evidence. In such accidents normally the relations can not witness the occurrence being away from the site of accident and the evidence cannot be given on the basis of personal knowledge. The Tribunal ought to have adopted a practical approach of the matter instead of sticking too much to the rules of evidence so as to render it impossible for the claimants to establish their claim. In our opinion, from the death certificate issued by the District Magistrate which has been completely ignored by the Tribunal and from Ex. IV F.I.R. and Ex. V list of the persons found dead in the accident and the statement of Beer Singh, it has been fully established that Kirti Singh died in the accident.

6. Now the next question for determination is as to whether the vehicle was rashly and negligently driven at the time of the accident. Normally, it is for the claimants to prove negligence but as in some cases like the present they cannot prove it as they did not witness the accident and they have no knowledge as to how it happened. But, if the claims are rejected on this ground, a serious hardship will be caused to the claimants. It is to avoid such hardships that the doctrine of res ipsa loquitur is applied which means that the accident speaks for itself or tells its own story. If from the facts on record it can be inferred that it was on account of rash and negligent driving that the accident took place, the burden will shift to the opposite parties/respondents to show that the accident happened due to some other cause than the negligence. It cannot be denied that the bus was being driven in hilly tracks. The maximum care and alertness is required while driving any vehicle in such roads. In fact, the reasonability on the driver becomes heavier in such roads. The bus in question had fallen in precipice causing death of more than 25 persons and causing serious injuries to many others. There were in all 45 passengers in the bus. The very nature of the accident shows that element of negligence was involved. The respondents, however, did not adduce any evidence oral or documentary to show that the cause of the accident was other than negligence in driving. Hon'ble Supreme Court in case Pushpabai Parshottam Udeshi and Ors. v. Ranjit Ginning and Pressing Co. Pvt. Ltd. and Anr. reported in : [1977]3SCR372 while dealing with identical situation observed as under:

The normal rule is that it is for the plaintiff to prove negligence out as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that ft is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states: The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused. In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus: An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charge as negligence tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.

7. The Tribunal has already found that respondent no. I was owner of the bus and at the relevant time it was insured with respondent No. 2. We have no hesitation in saying that the facts narrated in the F.I.R. (Ex.IV) about the accident were sufficient to apply the doctrine of res ipsa loquitur that the accident took place as reasonable care and caution was not taken which resulted in loss of life of so many persons. The finding of the learned Tribunal that the facts are not on record,

on the basis of which the aforesaid doctrine could be applied is not justified. In our opinion, the claimants/appellants have proved by oral and documentary evidence that Kirti Singh died in the accident and the accident was caused due to negligence in driving the bus. So far as the opposite parties/respondents are concerned, they have failed to discharge the burden on them to show that the accident took place for some other reason then negligence.

8. Now, the next question is as to what compensation should have been awarded to the appellants. It is not disputed that the vehicle was insured with respondent No. 2 at the relevant time. The policy has been filed as Ex. B-1. It was for the period 31.12.1973 to 30.12.1974. Section 95(2) Clause (b)(ii)(2) of Motor Vehicles Act, 1939 says there will be a limit of Rs. 75,000/- in all where the vehicle is registered to carry more than thirty but not more than sixty passengers. In the present case, the vehicle was registered to carry 38 passengers. Under the aforesaid provision only an amount of Rs. 5,000/- could be paid to the individual passenger. We are of the opinion that the Tribunal ought to have allowed the claim of the appellants to this extent

9. So far as the claim for compensation on other counts is concerned, we feel that the same has not been properly substantiated. In the facts and circumstances of the case if the claim is allowed to the extent of Rs. 5,000/- with interest at the rate of 6% per annum from the date of the claim petition, it shall serve the ends of justice.

10. For the reasons recorded above, this appeal is partly allowed. The award dated 29.3.1979 is hereby set aside and the claim of the appellants is allowed to the extent of Rs. 5,000/- with interest at the rate of 6% per annum from the date 15.10.1974 on which the claim petition was filed up to the date of the final payment which shall be paid by respondent No. 2. The claimants shall be entitled to the full costs in the Tribunal as well as of this Court

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