

Ramesh Chandra Vs. Madhya Pradesh State Road Trans. Corpn. and anr.

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Court : Madhya Pradesh

Decided On : Aug-17-1995

Reported in : 1997ACJ1293

Judge : S.B. Sakrikar, J.

Appeal No. : M.A. No. 127 of 1989

Appellant : Ramesh Chandra

Respondent : Madhya Pradesh State Road Trans. Corpn. and anr.

Advocate for Def. : M.L. Dhupar, Adv.

Advocate for Pet/Ap. : H.S. Rajpal, Adv.

Disposition : Appeal dismissed

Judgement :

S.B. Sakrikar, J.

1. This appeal is directed against the award dated 10.8.1988 passed by the Vth Additional Motor Accidents Claims Tribunal, Indore, in Claim Case No. 93 of 1987. The learned Tribunal by the impugned award dismissed the claim petition filed by the appellant Ramesh Chandra for award of compensation for the damage caused to his truck No. MPO 1850.

2. The undisputed facts of the case are that on 31.5.1980 at about 5.30 to 6 in the morning, driver Badri, PW 3, was going from Indore to village Kajlana by truck No. MPO 1850, when he reached at a distance of about 5 km. from the village Dharampuri then he saw bus No. CPH 8473 of M.P.S.R.T.C. coming from the opposite direction. The alleged bus was Kota-Indore passenger bus which was driven by driver Lekhraj, respondent No. 2. Truck No. MPO 1850 and the passenger bus No. CPH 8473 collided together at the time of crossing, which resulted in an accident causing damage to both the vehicles and some passengers, travelling in the passenger bus, received injuries.

3. The respondent, M.P.S.R.T.C., filed one claim petition against the appellant in the court of the III M.A.C.T., Indore, for award of the compensation for the damage caused to the bus in the alleged motor accident. The claim was dismissed on the ground that the driver of the bus was negligent, an appeal was preferred against the award passed by Tribunal before this Court in Misc. Appeal No. 181 of 1983; and the award was confirmed by this Court by order dated 30.1.1986.

4. The present appellant, who is owner of the truck No. MPO 1850, also filed a separate claim for award of compensation of Rs. 52,010/- for the damage caused to his truck in the alleged accident. It is alleged by the claimant-appellant in his petition that the accident resulted due to rash and negligent driving of bus No. CPH 8473 by driver of the bus, Lekhraj, respondent No. 2, therefore, non-applicants/ respondents are liable to pay the compensation. The claim petition was resisted by the non-applicants/respondents. The Tribunal after considering the evidence on record held that from the evidence it is not proved that the driver of the bus was rash and negligent and was responsible for the alleged accident. The Tribunal dismissed the claim petition filed by the claimant-appellant. Being aggrieved by this award the appellant has filed this appeal.

5. On the basis of grounds raised in the appeal memo and on the arguments of learned Counsel for the appellant following questions arise for decision in this appeal:

(1) Whether bus driver, Lekhraj, drove bus No. CPH 8473 rashly and negligently on the date of the incident, as a result of which the accident occurred?

(2) Whether driver Lekhraj, respondent No. 2, is totally responsible for the alleged accident?

(3) Whether in the alleged accident damage to the tune of Rs. 52,010/- was caused to the truck No. MPO 1850?

Point Nos. 1 & 2

6. The learned Counsel for the appellant contended that in Claim Case No. 227 of 1980 decided on 19.3.1983 by the Third M.A.C.T., Indore, which was confirmed by this Court in M.A. No. 181 of 1983, the finding of the Tribunal that the alleged accident was occasioned as a result of the negligent driving on the part of the bus driver and thereby dismissing the claim of the respondent, is sufficient to prove that the alleged accident occurred because of the rash and negligent driving of the bus driver, Lekhraj, and therefore, the respondents are liable to make good the damage caused to the truck in the alleged incident. The learned Counsel for the appellant also contended that from the evidence adduced on behalf of the claimants before the learned Tribunal it is also proved that the alleged accident occurred because of rash and negligent driving of the bus driver Lekhraj, respondent No. 2. The learned Tribunal has committed an error in deciding issue No. 1 against the appellant. The learned Counsel also contended that from the evidence adduced on behalf of the appellant it is amply proved that after the accident the truck was damaged and for repairing the truck he had spent about Rs. 50,000 which he is entitled to recover from the respondents. The learned Tribunal has committed an error in deciding issue No. 3 against the appellant and thereby dismissing the whole of the claim.

7. Learned counsel for the respondent in reply has contended that the finding recorded by the Tribunal in Claim Case No. 227 of 1980 cannot be considered for deciding the issues framed in the present case. He contended that it is a general principle of law that every case has to be decided on the strength of the evidence recorded in that particular case. Therefore, the appellant cannot take advantage of any findings recorded by the Tribunal and confirmed by this Court in Claim Case No. 227 of 1980. The learned Tribunal has rightly decided the aforesaid position of law while deciding issue No. 1. The learned Counsel also contended that the

learned Tribunal has considered the evidence on record and after due appreciation of the evidence recorded the finding on issue No. 1 against the appellant. The findings recorded by the Tribunal on issue No. 3 are based on the appreciation of the evidence and require no interference.

8. On perusal of the record and copy of the order dated 30.1.1986 passed in M.A. No. 181 of 1983, I agree with the contention of the learned Counsel for the respondent that the findings recorded in Claim Petition No. 227 of 1980 on the point of negligence cannot be taken into consideration for deciding whether the bus driver, Lekhraj, was totally responsible for the alleged accident. The finding about rash and negligent driving of the bus driver can only be decided on the basis of the evidence recorded in the present case. On the point of rash and negligent driving evidence was led by both the parties. The claimant-appellant has examined his driver Badri, PW 3, and one witness Mangilal, PW 4, who was travelling in the truck at the time of accident, whereas the respondent/non-applicants have examined driver Lekhraj, DW 2. So far as statement of witness Mangilal, PW 4, is concerned, I am of the opinion that the testimony of Mangilal was rightly rejected by the Tribunal as he was sitting in the back side of the truck at the time of the accident and, therefore, he was not a proper person to give details about the accident. Appellant's witness Badri, PW 3, has stated that on the date of the incident when he was driving the truck towards Sanwer on the left side of the road, then at the same time he saw a passenger bus coming from opposite side. The bus suddenly gave a dash to his truck which resulted in the accident and in the accident the chassis of his truck, engine, body and cabin were damaged. In his cross-examination in para 8, he stated that he did not remember whether at the time of accident lights of his truck were off, but he definitely stated that the lights of the bus were off. When he was confronted from his previous statement recorded in Claim Case No. 227 of 1980, then some contradictions and omissions were found in his statement. In para 16 of the cross-examination, he admits that at the time of accident he was driving the truck in third gear. He also admits that when the passenger bus came near to his truck at the same time he changed the gear of the truck and then applied the brakes and tried to turn the truck to his left side. At that time the passenger bus was 10 feet away from the truck. The statement of the driver, Badri, clearly indicates that before the accident he was driving his truck in

the top gear and when he saw the bus coming from the opposite direction and the passenger bus came just in front of his truck, then he changed the third gear and after applying the brakes tried to turn the truck to the left side of the road. It is clear from the statement of Badri that before the accident he was driving his truck in the middle of the road and in the top gear which indicates that the truck was driven with a high speed.

9. Bus driver Lekhraj, DW 2, has clearly stated in his statement that at about 5.45 in the morning on the date of incident when he was driving the bus from Sanwer to Indore then after 5 to 7 km. away from Sanwer, he saw a truck coming from the opposite direction. According to him, the truck was coming from the wrong side of the road with lights off. The truck was coming with high speed and when he saw the truck coming from the opposite side, he slowed down his passenger bus, at that time his bus was on the left side of the road. The truck suddenly gave a dash to his bus from the right side. The dash was so powerful that his bus was pushed 5 to 6 feet back and then turned to right side of the road. The truck also turned towards left side of the road before both the vehicles stopped by the side of the road after the accident. In the cross-examination in para 8, he specifically stated that because of the dash by the truck his bus turned towards right side of the road and then stopped on the right side of the road. From the statement of driver Lekhraj, DW 1, it is clear that a dash was given to his bus from the front side and as a result of this dash the bus was pushed 5 to 10 ft. behind and then turned towards the right side of the road and stopped with front side facing the right side of the road. On considering the statements of both the drivers it appears that before the accident the truck was driven at a high speed with lights off in the middle of the road and when the passenger bus came from the opposite direction then driver of the truck wanted to slow down the speed and turned his truck on the left side of the road and in the process the truck driver gave a dash to the passenger bus from the right front side of the bus resulting in an accident. Looking to the position of the vehicles after the accident as mentioned in the spot-map, Exh. P/20 and photographs, Exh. P/1 to P/15, show that after the dash the bus has gone 5 to 10 ft. back in the opposite direction and then it turned to the right side of the road. Similarly, the truck also as a result of dash turned to right side of the road and its front side was below the road facing on the left side of the road. Looking to

the position of the vehicles and from the statements of Lekhraj and Badri, I do not find that the learned Tribunal has committed any error in deciding the issue No. 1 against the appellant. On the basis of the evidence on record, I also hold that it is not proved from the evidence that only respondent No. 2, driver of the passenger bus, was responsible for the alleged accident which resulted because of the rash and negligent driving of the bus driver.

Point No. 3

10. The Tribunal has discussed the evidence of the applicant Ramesh Chandra, PW 1, witness Gulam Nabi, PW 2, and witness Ramesh Chandra, PW 6, and has rightly disbelieved the witnesses on the basis of contradictions found in their statements and the receipts, Exh. P/16 to P/20. Because of the contradictions found in the statements of the claimant and the witnesses, the receipts Exh. P/16 to P/20, become suspicious and on the basis of these receipts it cannot be held that in the alleged accident the truck of the claimant was damaged to the extent of Rs. 50,000 and the appellant-claimant has incurred expenses of Rs. 50,000/- for the repair of the damaged truck.

11. As a result of the above discussion, I am of the opinion that the findings recorded by the Tribunal on issue Nos. 1 to 3 are based on the appreciation of the evidence and the Tribunal has rightly decided the issues against the appellant and dismissed the claim of the appellant. In my opinion, the Tribunal has not committed any error of law or fact in dismissing the claim of the appellant and, therefore, no interference is necessary in the findings and the award passed by the Tribunal. The award passed by the Tribunal is confirmed.

12. In the result, the appeal of the claimant-appellant being devoid of any merit is dismissed accordingly. The award passed by the Tribunal is confirmed. No order as to costs of this appeal.