

Sheela Devi Vs. Union of India

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Court : Punjab and Haryana

Decided On : May-11-2001

Reported in : 2002ACJ1434

Judge : R.L. Anand, J.

Acts : Motor Vehicles Act - Sections 163 and 166

Appeal No. : F.A.O. No. 944 of 1996

Appellant : Sheela Devi

Respondent : Union of India

Advocate for Def. : Mr. Kamal Sehgal, Adv.

Advocate for Pet/Ap. : Mr. H.S. Gill, Sr. Adv and; Mr. G.S. Gill, Adv.

Judgement :

R.L. Anand, J.

1. The appellants are the unfortunate legal representatives of Shri Ram Kumar, deceased, who lost his life in a vehicle accident at the age of 37/38 years and when the claim petition was filed by his wife, children and mother before the Motor Vehicles, Patiala, the learned Tribunal returned the finding against the claimants, inter alia holding that it is not proved on the record that accident had taken place

on account of the negligence of LNK Jagdish Singh, respondent No. 2. Therefore, the petition which was filed by the claimant-appellants under Section 166 of the Motor Vehicles Act was dismissed.

Not satisfied with the finding of the tribunal, the present appeal.

2. Some facts can be described in the following manner. The appellants alleged that the vehicular accident took place on 28.8.1994 in which the life of Shri Ram Kumar was lost. As per the allegations of the claim petition, the accident took place in the military area, Patiala at about 9.30/10 P.M. when Shri Ram Kumar deceased was coming on his bicycle within the area of cantonment and when he reached near New Jat Colony crossing, Jagdish Singh respondent No. 2, who was driving the military vehicle No. BA No. 86E-7744-M along with vehicle No. BA No. 83G-5964E in a very negligent and high speed, struck against the bicycle of the deceased as a result of which the body of Shri Ram Kumar was crushed under the last wheel of the vehicle. Shri Ram Kumar received the head injury. First Information report was also lodged in Police-Station, Sadar, Patiala and post-mortem was conducted on the dead body. According to the claimants. Court of Inquiry was also conducted but the Inquiry Officer wrongly and with a mala fide intention exonerated Shri Jagdish Singh and the Government of India.

3. With these broad allegations the claimants alleged that they were dependents on the income of the deceased and they were entitled to the compensation of Rs. 10,00,000/- besides interest at the rate of 12%.

4. Notice of the claim petitioner was given to the respondents. According to the respondents, deceased did not meet with the accident with the vehicle. Rather, the death of the deceased took place in suspicious circumstances in military area. According to the respondents, the petitioner-appellants are not entitled to any compensation as no accident had taken place with any vehicle of the Government of India. Supporting his defence, respondents alleged that it was not possible for the deceased to come under the rear wheel of the vehicle. Alleged vehicle is very huge vehicle which is more than 72 feet in length. Such vehicles always run with all the lights and specially during the night. The speed of such like vehicles is not more than 10/12 kins per hour. By denying all these allegations the respondents

prayed for the dismissal for the claim petition.

5. The Tribunal framed the following issues for the disposal of the petition :-

1. Whether Ram Kumar died in an accident which took place on 28.8.1994 with vehicle No. 83G5964E towed by Tatra BA No. 86E 7744M which was being driven by respondent No. 2 rashly and negligently driving of the said vehicle in the area of military area, Patiala OPP

2. Whether the claimants are the legal heirs of the deceased and to what amount of compensation the claimants are entitled to and from whom OPP

3. Relief.

Both the parties led evidence in support of their case and finally the Tribunal under issue No. 1 held that it is not proved on the record that accident had taken place with the vehicle in question and that the appellants have not been able to established that the death of Shri Ram Kumar took place on account of negligence of respondent No. 2. The Tribunal further held that in fact it was a case of hit and run. The claimants ought to have filed a claim petition under Section 163 of the Motor Vehicle Act. Issue No. 2 was, however, decided in favour of the claimed but on account of the strength of the finding given under Issue No. 1, the Tribunal rejected the claim petition.

Not satisfied with the finding of the Award dated 18.11.1995 the present appeal.

6. During the pendency of the appeal, the appellants have also tiled an application under Order 41 Rule 27 C.P.C. and they wanted to place on record the finding of the Court of Inquiry in order to establish that the vehicle in question was involved in the accident and that Shri Jagdish Singh, respondent No. 2 was the driver at the relevant time.

7. I have heard Shri H.S. Gill, learned counsel appearing on behalf of the appellants-claimants and Shri Kamal Sehgal, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of this case and first of all I dispose of the application under Order 41 Rule 27 C.P.C.,

which in my opinion, deserves to be allowed because this document will strengthen the hands of this Court for the just decision of the case and it will also help the Court in order to really adjudicate upon the controversy involved in this case.

8. In the written statement there is a complete denial on behalf of the Union of India. They have denied even the involvement of the vehicle. It is not the case of the Union of India that their vehicle was involved or that it was being driven by Shri Jagdish Singh but there was no negligence on the part of the respondent No. 2. Hence they are not liable. The stand of respondent No. 2 stands falsified if a cursory reading of this vital document is noted. As I have just stated above that this document will help me for the just decision of the appeal, therefore, I have taken this document on record. Since it is the document of the respondent and its authenticity has not been challenged, therefore, the opposite party did not lead any evidence in rebuttal. This document pertains to the findings of the Court of Inquiry. Under the finding of the Court of Inquiry, in sub-para (h) it was observed as follows :-'The Court felt from the circumstantial evidence that

No. 14900485 Hav. Ram Kumar of 21 Mech. Inf.BN was crushed under the last right side wheel of trailer BA No. 83G5964E towed by Tatra BA No.86 E7744 M driven by LNK Jagdish Singh of 665TK Tptr Coy'.

Thus, the findings of the Court of Inquiry which is a document of the respondents, fully establish that Ram Kumar was crushed and the vehicle involved was of the Government of India which was being driven by Shri Jagdish Singh, respondent No. 2. Still the written statement has been filed by the respondents against their own record.

9. The things do not rest here. It is also the finding of the Court of Inquiry that on examination of (he witnesses it has come to the conclusion that Shri Ram Kumar was crushed under the wheel of the trailer towed by Tatra vehicle belonging to 665 Company.

10. In these circumstances, the only point for determination for me would be whether this accident took place on account of the negligence of respondent No.

2. Even if it is assumed for the sake of arguments that Shri Jagdish Singh, respondent No. 2 was not negligent, in that eventuality, whether the appellants can be compensated under the heading of 'No fault liability'.

11. First of all, I will deal with the negligence aspect. According to the claimants this accident was witnessed by Shri Subhash Chand. It is the common case of the parties that accident took place in the military area, Patiala while this witness belongs to Haryana. As per this witness Shri Subhash Chander, he had come to Patiala in order to purchase the tractor parts and Shri Ram Kumar met him by chance. Thereafter, both of them went to military canteen. From there they went to the house and during the night when they were together the accident took place which was witnessed by him. I have gone through the statement of Shri Subhash Chander who appeared as PW3. On going through the same, I am of the opinion that this witness has been introduced by the claimants-appellants in order to get the compensation. Though it is stated by this witness that he had seen the accident when it was allegedly caused by respondent No. 2 whose name he came to know subsequently but I am in a position to hold that this witness has exonerated respondent No. 2 Shri Jagdish Singh. In the examination-in-chief it has been stated by this witness that he cannot tell for whose fault the accident took place. In the cross-examination the witness deposed that Ram Kumar belonged to his brotherhood. He had no relations at Patiala. He does not own any property in Patiala. He had come to Patiala on the day of accident in order to purchase the spare parts and Ram Kumar met him per chance and both of them went to the house of Shri Ram Kumar. In the cross-examination this witness admitted that he does not own a tractor in his name. He had come to Patiala to purchase some tractor parts which he could easily purchase from Jind itself which is at a considerable distance from Patiala regarding which a judicial notice can always be taken. The witness is not in a position to tell the name of the shopkeeper from whom he purchased the alleged spare parts of the tractor. Though he obtained the bill of purchase yet the same has not been produced in Court. According to the witness he and the deceased lived in the house of the latter up to 9.00 P.M. Thereafter, Shri Ram Kumar left for his duty. He remained in the military canteen which was being managed by the private person. The witness further deposed that he purchased some goods from the said canteen. No cash

memo of the canteen has been produced from which I may be able to draw an inference about the alleged presence of Shri Subhash Chander at the place of accident. The witness is a shaky. On one hand, he stated that he was present at the time of the accident but in the cross-examination he deposed that when Shri Ram Kumar had left for duty, after interval of 5/7 minutes he saw the accident. It appears that accident had not taken place in his presence. Subhash Chander also admitted that he did not go to the police-station on the day of accident. Thus, I am in conformity with the opinion formulated by the Tribunal that Shri Subhash Chander PW3 is an introduced witness but the Tribunal has fallen in error by totally rejecting the claim petition. At the most the Tribunal could exonerate respondent No. 2 that he was not responsible for this accident but under the 'no fault liability' the respondents could not be exonerated as it is proved on the record that the vehicle of the Government of India was involved in this accident and respondent No. 2 was driving the same at the relevant time. Thus, I modify the finding of the Tribunal on issue No. 1 and hold that though respondent No. 2 was not driving the vehicle in a rash and negligent manner but under the 'no fault liability' the respondents are always liable to pay the compensation to the claimants. Since it is a case of death, I am inclined to award Rs. 50,000/- by way of compensation to the claimants irrespective of the fact that after the death of Shri Ram Kumar Smt. Sheela Devi might be getting family pension from the military authorities. For awarding compensation of Rs. 50,000/- I have relied upon a judgment reported as 1997(1) PLR 403: 1997(1) RCR(CMI) 693 (P&H;), Smt. Siimitra Devi and others v. Danesh Kumar and others, in which it was held that if an accident had taken place even before the amendment and since the amendment is a beneficial legislation, it should be interpreted in favour of the claimants for whose benefit this amendment was made.

12. Claimants definitely are the legal heirs of deceased Ram Kumar. Appellants No. 1 to 4 are the wife and children of the deceased and appellant No. 5 is the mother. Thus, I modify the finding of the trial Court on issue No. 2 and it is hereby ordered that respondents No. 1 to 3 jointly and severally shall pay the compensation of Rs. 50,000/- along with interest at the rate of 12% from the date of the filing of the claim petition till payment. The entire amount of compensation along with interest shall be paid to Smt. Sheela Devi appellant No. 1 who will utilise

the money for her benefit and for the benefit of appellants No. 2 to 4. I am not inclined to give any amount of compensation to appellant No. 5 as she has not appeared in the witness box to say that she was dependent on the income of the deceased.

Appeal is partly allowed as indicated above. No order as to costs.

13. Appeal parity allowed.

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