Mohinder Kumar Vs. Devi and ors.

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Court : Delhi

Decided On : Aug-23-1989

Reported in : ILR1989Delhi298

Judge : Malik Sharief-ud-din, J.

Acts : Motor Vehicles Act, 1939 - Sections 95

Appeal No. : First Appeal No. 20 of 1981

Appellant : Mohinder Kumar

Respondent : Devi and ors.

Advocate for Pet/Ap. : S.K. Saul,; Ashok Popli and; Vaneeta Saxena, Advs

Judgement :

Malik Sharief-ud-din, J.

(1) The appellant is aggrieved of an award dated 26th of July, 1980 passed by the Motor Accident Claims Tribunal allowing a sum of Rs. 36,000 as compensation in favor of respondents No. 1, 2 and 3 in the appeal. This followed claim petition, under section 110-A of the Motor Vehicles Acton the ground that one Tilak Raj husband of respondent No. 2herein died in a motor accident which took place on the light intervening 6th February and 7th February 1971 at about 1.30A.M. at G.T. Road, near Seelampur.

(2) The facts as disclosed in the claim petition are that on the aforesaid date and time the deceased along with five more occupants was traveling in car No. Drp 34 from Delhi Shahdara to Delhi. At the relevant time Shri Mahinder Kumar Jain the appellant is stated to have been driving the car rashly and negligently and when it reached near Seelampur police post the appellant suddenly swerved to the right and hit violently against agree on the extreme right tide of the road as a result of which out of the six occupants of the car two died on the spot while others received injuries. The car was also alleged to have been badly smashed in the accident. The deceased Tilak Raj was one of the dead passengers. Respondent No. 2 in the claim petition was the owner of the ear which was insured with respondent No. 3 in the claim petition. The driver and the owner of the car had denied that the accident took place as a result of rash and negligent driving by the appellant. The plea of the insurance company was that it cannot be held liable as the deceased was admittedly a passenger and under the provisions of section 95of the Motor Vehicles Act of 1939 a passenger in the car is neither required to be covered nor was he entitled to recover under the policy referred to.

(3) Mr. Kaul urged that the Tribunal was in error in holding that the accident took place as a result of rash and negligent driving of the offending car by the appellant. The fact that the accident took place is not in dispute. The fact that the deceased Tilak Raj died as a result of this accident is not in dispute. The manner in which the accident took place is also not in dispute.In the claim petition the appellant had taken two specific pleas;firstly that due to sudden appearance of a stray animal on the road he had to swerve the car to a side and eventually struck against a tree resulting in the accident and death and secondly that there was a mechanical failure of brakes. These two specific pleas have not been proved by him so much so that he has failed to appear even as a witness for himself. The Tribunalwas, thereforee, justified in discarding this plea as an afterthought.

(4) In support of their plea of negligence and rashness the petitioners in the claim petition examined Public Witness 5 Satwant Singh who as an eye witness deposed that he saw the car being driven at a fast speed as a result of which this accident took place. He has explained his presence because his house is situated nearby and at the time of the incident he was parking his three wheeler.He was

the person who was first examined by the police on thespot. His presence on the spot is sufficiently explained. 'The Tribunal further felt that this was a case where the doctrine of reships liquated would apply as the appellant had admitted the factual position and the fact that the accident was inevitable or unavoidable was a matter, the burden of proof of which on the circumstances of this case would shift to the appellant. I may atonce point out that the aforesaid doctrine is based on the ground that the facts of the case speak for itself. In the present case,the fact of accident, the death of the passengers is not denied and a specific case was set up by the appellant to absolve himself of negligence or rashness which is that the accident occurred due to the intervention of a stray cattle and failure of brakes.In my view, the Tribunal was right in holding that these are facts which it was the duty of the appellant to prove. But having failed to appear in the witness box it must be presumed that the accident took place in a manner different than the one suggested by the appellant.

(5) The present case, the fact that the car struck against agree violently on the extreme right side of the road cannot be disputed at all. This fact alone goes to show that the car was being driven at a reckless speed as a result of which it went out of control sad struck violently against a tree. It does appear that the appellant had to serve the vehicle to the right and maybe because of some intervention but then if the appellant had taken proper care in driving the vehicle at the proper speed it would have been within his power to control the same. the obedience in such cases essentially lies in not taking proper precautions against an impending accident. I would, on the facts and circumstances of this case, thereforee, concur with the finding of the Tribunal that the accident occurred due to rash and negligence driving by the appellant.

(6) The next point that was urged before me by Mr. Kaul on behalf of the appellant is in respect of the interpretation of the insurance policy. Mr. Kaul invited my attention to section 2 of the Insurance Policy titled liability to third party. In particular, a reference was made to sub-clause (a). His contention is that this covers the case of any person. I am unable to agree with this contention because this clause has been subject to construction by the Supreme Court in the case of Pushpabai Purshottam Udeshi and others vs. M/s. Ranjit Ginning and Pressing

Company and another, 1977 A.C.J. 343(1) and the Supreme Court has totally turned down an argument which is being advanced before me now. Alternatively, Mr. Kaul submitted that the expression in section 95(b)(i) namely 'any person' is comprehensive enough.to cover the case of the appellant and that the insurance company, thereforee, must be held liable for payment of compensation. The answer to this argument is also provided by the observations of the Supreme Court in the case supra.

(7) Next Mr. Kaul submitted that the Motor Vehicles Act, in so far as the claims arising out of the accidents are concerned, is a piece of welfare legislation and must be liberally construed in favor of the third parties. His contention is that the exception to section 95(1) has been done away with, rather totally repealed, in the Motor Vehicles Act, 1988 and sins the exception is no more to be found in the scheme of the Motor Vehicles Act as it existed today it must be impliedly deduced that this will have a retrospective effect which makes the insurance company liable. In this connection he is deriving sustenance from Benaras Ban'k Ltd. v. Shri Sri Prakasha Bhagwan Das and Ors.. : AIR1946 All269 . I do not agree withMr. Kaul. In that case it was an amendment of section 235 of the Companies Act wherein it was specifically provided (hat. the limitation within which the liquidator of a company could proceed against the management of the company for breach of trust would be three years and it was so held on the scheme of the amendment that section 235 as amended is a section of procedure containing a rule of limitation. It is an established principle that in the case of an alteration of a substantive law as opposed to a mere law of procedure, an intention adversely to affect the subject, in the sense of depriving him of some accrued right or interest, is not to be deduced. Section 95 of the Motor Vehicle Act casts a duty and confirms a right and creates also aliability. It is in the nature of a substantive law. The repeal of any portion thereof in a subsequent amendment will in no way affect the rights and liabilities created at a particular stage of the development of law unless it is expressly provided by the legislation. No such deduction can be made by way of implication. In the present case, thereforee, I agree with the finding of the Tribunal that since the deceased was a gratuitous passenger, the liability of the insurance company is not covered by the provisions of section 95 of the Motor Vehicles Act unless, of course,there is a specific provision to cover such a risk on

payment of extra premium. Even in such cases it will be limited to the express stipulation provided in the policy. It is always open for an insurer to take out a policy beyond the scope of section 95 of the Motor Vehicles Act. In any case the terms of the policy in this case are the same as the one that was subject of construction by the Supreme Court in 1977 Acj 343 supra. I may go a little further to add that the facts in this case more or less are substantially the same.

(8) Mr. Kaul has next made a grievance in respect of thefact that the widow of the deceased admittedly had remarried in January 1977 and, thereforee, she can no more be dependent on the deceased and to that extent the award should be modified.He has invited my attention to the fact that an application to this effect was made before this court when the appeal was moved consequent to which a notice was given to the opposite party and it was admitted by the opposite party that the widow was remarried on 24th of January 1977. By an order of this court dated 20th of October 1981 it was observed that in view of this admission there is no need for recording any evidence in respect of this fact. This is an admitted position as at present, while dealing with the dependency and income the Tribunal found that the income of the deceased was Rs. 3001- per month and after deducting one-third on account of his personal expenses the dependency was brought down to Rs. 2001- per month, that is, a sum of Rs. 24001- per annum. The dependents were the mother,the widow and the infant child. This shows that the Tribunal had allowed Rs. 8001- per annum to each of the dependents. Admittedly, now the widow is no more dependent on the deceased from 24th of January, 1977. So the multiplier of 15 in her case will not be applicable. In her case a multiplier only of 6 years will be relevant. A sum of Rs. 7200.00 as such will have to be deducted from the total amount awarded. The total amount of compensation thereforee, to which the respondents No. 1, 2 and3 in this appeal are entitled to will be Rs. 28,800.00 This will be exculding the interest which the Tribunal has allowed at the rate of 6% per annum from the date of award till the date of realisation the amount is not paid within two months as directed by the Tribunal.

(9) Now, while concluding I may make a reference to the contention of Mr. Kaul that he has made an application being C. M. 2899/89 for allowing him to place on

record the certified copy of the judgment of the Criminal Court dated 17th of December 1976 by which the accused was acquitted in the criminal case in respect of this accident after the criminal court held that the fact of rash and negligent driving was not proved.I allow the application. Let the order be placed on the record.As to the effect of the order I may at once add that this will not in any way interfere with the finding of the Civil Court which is based on independent evidence. If there is a finding of a criminal court holding a driver of a vehicle responsible for rash and negligent driving that would prima facie provide evidence of rash and negligent driving. But converse is not true. With this observation the appeal is dismissed subject to the modification made in the amount that the respondents 1 and 3 will been titled to.