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Court : Delhi

Decided On : Oct-14-2003

Reported in : III(2003)ACC710; 2003VIIAD(Delhi)555; 107(2003)DLT590

Judge : S.K. Mahajan, J.

Acts : Indian Penal Code (IPC) - Sections 279 and 304A

Appeal No. : FAO Nos. 350 and 362/2001

Appellant : Sukhdev Singh and ors.

Respondent : Vinod Kumar and ors.

Advocate for Def. : Reeta Kaul, Adv.

Advocate for Pet/Ap. : J.S. Kanwar, Adv

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. ADMIT.

2. The matter being short and since common questions of law and facts are involved in both these appeals, with the consent of the parties they have been

heard together and disposed of by this order.

3. These appeals are directed against the judgment of the Motor Accident Claims Tribunal whereby the claim petitions filed by the appellant for compensation for the death of his wife and son in a road accident alleged to have been caused by the rash and negligent driving of the offending bus were dismissed by the Tribunal on the ground that the appellant had not been able to prove that the offending bus was involved in the accident. A few facts relevant for deciding these appeals are:-

On 27.2.1994, the appellant Along with his wife and son was going on a two wheeler scooter and when he reached on the road behind DTC Depot, Shahadra-II at about 10.30PM a DTC bus being driven in a rash and negligent manner came from inside the depot and hit the scooter from front as a result of which the appellant, his wife and son fell down on the right and the wife and son of the appellant were stated to have been crushed by the bus and died at the spot. The appellant filed petitions before the Motor Accident Claims Tribunal claiming compensation for the death of his wife and son in the said accident. It was alleged in the petition that as the wife and son of the appellant had died in the accident caused by the rash and negligent driving of the DTC bus bearing no.DL 1P 9601 plying on route no.216, the appellant was entitled to compensation for their death.

4. In the written statement filed by the respondents it was alleged that no accident was caused by the offending vehicle and there was thus no question of the wife and the son of the deceased having been killed in the alleged accident or the appellant being entitled to compensation for their death. On the pleadings of the parties the Tribunal framed the following issues:-

1. Whether the deceased has received injuries on account of rash and negligent driving of DTC bus no.DL 1P 9601 by respondent no.1?

2.Whether the petitioners are entitled to any compensation. If so, to what amount and from whom?

3.Relief.

5. Appellants besides examining himself as PW-1 also examined five more witnesses which included an eye witness Sanjeev Kumar PW-5 and the Investigating Officer Nepal Singh as PW-6. The respondents in support of their case examined the Driver and Conductor of the offending bus. The Tribunal, as already mentioned above, on the basis of the evidence produced by the parties came to a finding that it was not proved from the testimony of the appellant's witnesses that the DTC bus in question had hit the appellant's scooter and as a consequence of which, the wife and child received injuries and the claim petition was, accordingly, dismissed.

6. The appellant appearing as PW-1 has stated in his evidence that at about 10.30PM while he was riding his scooter and had reached Seema Puri a bus came from Shahdara Depot-II and hit his scooter from front side as a result of which the scooter fell down on the left side and his wife and son fell on the right side of the scooter; that the bus sped away from the spot after causing the accident and crushing his wife and son who died at the spot because of the injuries sustained in the accident; that he took his wife and son to the GTB hospital where they were declared dead; that the duty Constable informed the Police Station Seelam Puri and Police came at the hospital and recorded his statement. It is further stated that a site plan of the spot was prepared and FIR under Section 279/304-A IPC was registered by the Police. He stated that after funeral of his wife and son, he enquired about the bus number, name of the driver, route number etc. from DTC Shahdara Depot-II and he was informed that the bus number was DL 1P 9601 and the same was plying on route no.216. He stated that thereafter he informed the Police regarding the bus number and driver of the bus but the Police did not either impound the bus nor arrested the driver. Thereafter he sent a complaint to the Police Commissioner as well as to the Lt.Governor and copy of the same has been annexed and proved as Ex.PW1/C.

7. PW-5 Sanjeev Kumar is claimed to be an eye witness. He stated that he was coming from his house on the fateful day and at about 10.30PM when he reached near the DTC Shahdara Depot-II, he saw DTC bus bearing no.DL1P 9601 plying on route no.216 coming from the DTC bus depot No.II rashly and negligently and hitting the scooter of the appellant. He stated that as a result of the accident, the

scooter fell down and the pillion rider lady and a male child were crushed and sustained injuries. He stated that he noted down the bus number in his diary, copy of which was produced in Court and he informed about the same to the appellant. He further stated that after 2/3 days when he read about the accident in the newspaper, he informed the appellant about the bus number involved in the accident. In his cross-examination, he stated that he had informed to the Police about the number of the bus and had gone to the Police Station on the same day but his statement was not recorded.

8. Sub Inspector Nepal Singh who investigated the matter has appeared as PW-6. He stated that on receiving information about the accident from the GTB Hospital, he reached the hospital and after recording the statement of the appellant, he went to the spot. He stated that he prepared a site plan and seized the two wheeler scooter from the spot; that he tried to trace the eye witness but could not find any such eye witness nor could he trace the number of the bus. He stated that he visited the DTC Depot number of times to investigate the involvement of the bus but neither the Manager nor any other official i.e. the Time keeper, record clerk, cooperated with him. He stated that he came to know that the accident was caused by the bus plying on route no.216 but as he had not received the complaint made by the appellant to the Lt.Governor and Commissioner of Police, he did not take any action against the offending vehicle DL 1P 9601. He stated that as he could not find eye witness after completion of the enquiry the case was filed being untraced, however, it was certain that the accident was caused by the DTC bus plying on route no.216. In his cross-examination he stated that the accident was caused at a distance of only 10 to 15 paces from the DTC bus depot and there were tyre marks of the DTC bus from the gate of the bus depot to the spot of accident. He stated that, though, he had not seen the accident but on the basis of the statement of the appellant and on the basis of the tyre marks of the bus he was certain that the accident was caused by the DTC bus of route no.216.

9. The Driver and the Conductor of the bus have naturally, with a view to save themselves, denied involvement of the bus in the accident. It is, however, admitted by them in cross-examination that the bus was taken out from the DTC depot at about 10.30PM and at the time of the accident, the bus was in the vicinity of the

spot of accident.

10. From a perusal of the evidence of the witnesses one thing is clear that the aforesaid bus of route no.216 bearing no. DL 1P 9601 was at the spot at the time of the accident. The only question, therefore, to be examined is whether the bus was involved in the accident. The Investigating Officer in his statement has clearly stated that in view of the tyre marks leading from the gate of the depot to the spot of the accident, he was certain that the accident was caused by the DTC bus of route no.216, however, in view of the non-cooperative attitude of the officials of the DTC, he could not complete his investigation and could not apprehend the culprits or pin point the vehicle which was involved in the accident. The accident had taken place at a distance of 10 to 15 paces from the gate of the bus depot. It is difficult to believe that no official or gatekeeper or security guard of the depot were present at the gate of the depot at the time of the accident. If any one of the officials was present at the gate, he must have seen the accident, I am, therefore, unable to believe that no official of the DTC had seen the accident. No record of the DTC bus to show at what time the bus left the depot was produced. Such record may have been useful to find out whether the offending vehicle had left the depot at about the time of the accident. The statement of the eye witness could not be brushed aside only because his name did not figure in the FIR or his statement was not recorded by the Police. The fact that the DTC bus was at the spot at the time of the accident, I do not find any reason as to why either the IO or the eye witness or even the appellant would implicate the said DTC bus as they had no enmity with any of the respondents.

11. The Tribunal while deciding the culpability and involvement of a vehicle in the accident is not required to succumb to niceties, technicalities and mystic maybes but are required to decide the cases on preponderance of evidence. The Tribunal while deciding such cases must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Supreme Court in a judgment reported as *Laxmibai Versus Karnataka State Road Trans. Corpn.* : [2001]3SCR747 has held that where the respondent did not produce copies of log-

sheet and control charts to show that the bus in question was not plying on that road on the date of the accident and the Tribunal on the basis of evidence recorded the finding that the bus was involved in the accident, the High Court in appeal should not have given undue emphasis to the technicalities and niceties and arrived at a wrong conclusion that the bus was not involved in the accident.

12. In view of the foregoing discussion, I am clearly of the opinion that the accident was caused entirely due to the rash and negligent driving of the offending vehicle bearing no.DL1P 9601 and the Tribunal has clearly erred in dismissing the petition and holding that the bus in question was not involved in the accident. I, accordingly, set aside the impugned judgment, allow these appeals, decide issue no.1 in favor of the appellants and remand the case to the Tribunal to decide the quantum of compensation payable to the appellants for the death of his wife and his son.

13. The parties are directed to appear before the Tribunal on 17.11.2003.

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