

Shish Pal and Ors Vs. Suresh Chand and Ors

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Court : Delhi

Decided On : Nov-21-2014

Judge : Jayant Nath

Appellant : Shish Pal and Ors

Respondent : Suresh Chand and Ors

Judgement :

\$~A-53 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

21. 11.2014 MAC.APP. 520/2012 SHISH PAL & ORS Appellants Through Mr.R.S.Mishra, Advocate. versus SURESH CHAND & ORS Respondents Through Mr.L.K.Tyagi, Advocate for R-3. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(Oral) 1. By the present appeal the appellants seek to impugn the award dated 25.02.2012 by which award the Tribunal concluded that the appellant has failed to show that the death of Smt. Gasna Devi occurred due to a road traffic accident and hence, dismissed the claim petition.

2. The brief facts which led to filing of the claim petition are that on 30.04.1999 Smt. Gasna Devi was being shifted from GTB Hospital to Jeevan Nursing Home. She was being shifted in an Ambulance. Inside the Ambulance she was accompanied by her husband Shish Pal, her brother Chandan Singh and other relatives. The Maruti Van Ambulance when it reached near Sarai Kale Khan at

Outer Ring Road, was hit by an offending tanker said to be plying rashly and negligently. It is stated that because of this accident Smt.Gasna Devi suffered injuries. She was removed to Jeevan Nursing Home through some other private car where she died within two hours from the accident. Hence, the present claim petition was filed.

3. The Tribunal framed the following issues:

1. Whether Smt.Gasna Died due to fatal injuries sustained in the accident on 30.4.99 due to rash and negligent driving of vehicle No.HR468891 on the part of R-1, Suresh Chand?.

2. To what amount of compensation, are the petitioners entitled and from whom?.

3. Relief.

4. On issues No.1 and 2 the Tribunal noted that initially the FIR was registered under Sections 279/337 IPC and later on Section 304 A was added. The Tribunal also noted that 304A IPC is nowhere mentioned in the chargesheet and a bare reading of the chargesheet reveals that the cause of the death could not be ascertained. The Tribunal noted that the deceased was hospitalised in unconscious state with a history of loose motion and vomiting. The Tribunal noted that even as per the document prepared under the signatures of Dr.B.K.Grami the cause of death is stated to be TBM i.e. brain fever. It is further pointed out that neither the IO nor the appellants have brought on record any material to show that the death occurred on account of the accident. Neither MLC was drawn nor post-mortem of the deceased was carried out. On the basis of the documents on record and the evidence placed on record by the respondent Insurance Company of medical investigator Dr.R.K.Karwa, the Tribunal concluded that the death did not take place due to a road traffic accident.

5. Learned counsel for the appellants points out to the charge sheet and FIR to contend that the connection with the motor accident and the death of the deceased is obvious.

6. I will first look at the evidence placed on record by the parties. PW-1 who was an eye witness and the husband of the deceased has filed his affidavit by way of evidence. He states that on the said date Smt. Gasna Devi was being shifted in a Maruti Van Ambulance to Jeevan Nursing Home from GTB hospital and in the accident it is stated that she suffered serious injuries. Thereafter, she was taken to the nursing home where she died within two hours. In his cross-examination, he admits that his wife was suffering from fever. He states that he was not satisfied with the treatment at GTB hospital and hence, he decided to shift her to Jeevan Nursing Home. He confirms that his wife was under drip in the Maruti van.

7. The FIR was registered for the offences punishable under Section 279/337 IPC. The relevant part of the chargesheet which was dated 19.04.2000, translated copy of which reads as follows:

The statements of Dr. Ravinder Sabharwal and Dr. Bilgram were recorded under Section 161 Cr.P.C. and the photocopy of O.P.D. Card no.4364 and Death Certificate have been obtained. After the advise, Section 304 A of India Penal Code has been added in this case as per the statements of the complainant and his relatives because it is not confirm as to whether the injured was died due to old disease or due to accident. Therefore, Section 304 A has been added.

8. I may look at the evidence of RW2 Dr.R.K.Karwa who said that he is the medical investigator appointed by Oriental Insurance Company Ltd. He says that he went to contact Dr. Ravinder Sabharwal from Jeevan Nursing Home who told him that the cause of death of the deceased was not due to the accident but due to TBM which is a sort of brain fever. He exhibited the report of Dr.Ravinder Sabharwal as Ex.RW2/2. In his cross-examination he confirms that Ex.RW2/2 is not signed by Dr. Ravinder Sabharwal himself and it is signed by his junior.

9. Ex.RW2/2 states that Smt. Gasna Devi was admitted with meningitis on 30.04.1999. The diagnosis of TBM was made according to the record of the hospital. Original stamp of Dr. Ravinder Sabharwal is placed on the document.

10. It is also noteworthy that no MLC was prepared. No post-mortem has been conducted.

11. The other points which are also noteworthy are that the Ambulance in which the deceased was being transported, as per PW-1 had other occupants including the appellant Sh.Shish Pal, the brother of the deceased and other relatives. If the accident was of such a severe nature so as to cause the death of the deceased, it is surprising that no evidence is placed on record for any injuries suffered by any other occupants of the vehicle.

12. Reliance of the appellant upon the statement of Chander Singh, the driver said to have been made under Section 161 Cr.P.C. is misplaced. The statement is made almost five to six months after the accident. He nowhere mentions that he suffered injuries. He does mention that Shish Pal suffered simple injuries. However, PW-1 Shish Pal in his evidence does not accept that he received injuries.

13. It was for the appellants to prove that Smt. Gasna Devi died due to the injuries resulting from the accident. The obvious evidence was the record of the Jeevan Nursing Home and the doctors who treated her at that time. This evidence is not filed. The FIR and the Chargesheet do not support the case of the appellants.

14. In the light of the above, there is no reason to differ with the view taken by the Tribunal. The appeal is without any merit and is dismissed. NOVEMBER21 2014/rb MAC APP. 520/2012

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