

K.S. Unnithan Vs. A.P.C. Technical Assistant and ors.

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Court : Gujarat

Decided On : Aug-23-1991

Reported in : 1992ACJ1128

Judge : J.N. Bhatt, J.

Appeal No. : F.A. No. 195 of 1982

Appellant : K.S. Unnithan

Respondent : A.P.C. Technical Assistant and ors.

Advocate for Def. : Ajay R. Mehta, Adv. for; Rajni H. Mehta, Adv.

Advocate for Pet/Ap. : I.M. Ratwani and; H.S. Balam, Advs.

Disposition : Appeal allowed

Judgement :

J.N. Bhatt, J.

1. This appeal is directed against the judgment and award passed by the Motor Accidents Claims Tribunal (Auxiliary), Mehsana, on 22nd June, 1981, in M.A.C. Petition No. 231 of 1979.

2. The appellant herein is the original claimant and respondents herein are the original opponents and they are hereinafter referred to as 'claimant' and

'opponents' for the sake of convenience.

3. The claimant filed the aforesaid claim petition for compensation of Rs. 9,999/- under Section 110-A of the Motor Vehicles Act, 1939 ('the Act' for short hereinafter), inter alia, contending that he sustained serious injuries on account of a vehicular accident which occurred on 22nd March, 1979, at about 4 p.m. in the Oil & Natural Gas Commission ('ONGC for short hereinafter) premises, at Mehsana. As per the case of the claimant, he was on duty as an employee of the ONGC and when he was going out of the office and going towards the main road from the compound of ONGC, on the day of the accident, the jeep bearing registration No. GJM 7335 came with speed and dashed against him and he sustained injuries. According to the contention of the claimant, the left side wheel of the jeep ran over his right foot resulting into serious injuries, including fractures. The claimant contended that because of the rash and negligent driving on the part of the driver of the jeep, i.e., opponent No. 1; the accident occurred. The claimant contended that opponent No. 1 was the driver, opponent No. 2 was the owner and opponent No. 3 was the insurer of the offending vehicle and, therefore, he claimed Rs. 9,999/- way of compensation from them.

4. The opponents appeared and resisted the claim petition by filing written statement, Exh. 22. The opponents, inter alia, contended that there was no vehicular accident as alleged by the claimant. The opponents denied all the averments made in the claim petition. It was also denied that the claimant met with an accident as knocked down by the jeep bearing registration No. GJM 7335 on 22nd March, 1979. According to the defence of the opponents, the claimant sustained injuries not on account of vehicular accident but on account of falling of pipe while he was on duty as a workman of ONGC.

5. On appreciation of the evidence on record, the learned Tribunal found that the injuries to the claimant were not the result of a vehicular accident. It was held by the Tribunal that the claimant sustained injuries on account of falling of heavy pipe in the premises of ONGC, with the result that the claim of Rs. 9,999/- was disallowed by the Tribunal. Being dissatisfied by the judgment and award passed by the Tribunal, the original claimant has now come up before this court

challenging its legality and validity under Section 110-D of the Act.

6. The learned counsel for the appellant-original claimant seriously argued that the Tribunal has committed serious error in not accepting the version of the claimant in view of the evidence on record. Prima facie, this submission may appear to be captivating but not sustainable in the light of the evidence on record. In order to qualify himself under Section 110-A of the Act for compensation, it must be shown that the accident has occurred on account of involvement of a vehicle. It is also incumbent upon the claimant to prove that the road accident in question is on account of either rashness or negligence or both, on the part of the driver of the offending vehicle. Thus, the claimant is obliged to show that he has sustained injuries on account of the vehicular accident because of the rashness or negligence on the part of the driver of the vehicle involved. Although in the present case the claimant has sustained serious injuries, including two fractures on his right foot, he has not been able to prove his case that the jeep No. GJM 7335 belonged to ONGC or any vehicle was involved in the accident. The defence of the opponents that the claimant sustained injuries on account of falling of heavy pipe is believed by the Tribunal, and rightly so, in the facts of the present case.

7. The appreciation of the evidence by the Tribunal cannot be said to be erroneous or perverse. Unfortunately, there is no material on record worth the candle which would call interference of this court in this appeal. So, the finding of fact reached by the learned Tribunal is justified. The criticism of the said finding by the learned counsel for the original claimant cannot be sustained. The finding of the Tribunal is based on unimpeachable evidence. It is an admitted fact that the claimant, immediately after the injuries, was taken to the clinic of ONGC and from there he was shifted to the V.S. Hospital, Ahmedabad. The history mentioned in the case papers and recorded by the doctor about the cause of injuries runs diametrically opposite to the case and version propounded by the claimant. Dr. H.M. Shah is examined, at Exh. 55. He has categorically stated in his testimony that the claimant was examined by him on 22nd March, 1979 at about 6.35 p.m. On examination, he found that there were injuries on the right ankle. He has admitted in the cross-examination that he had mentioned in the case papers about the history of injuries. History was noted in the case papers to the effect that 'fall of

heavy pipe on foot'. Original medical case papers in which the history is recorded have been produced, at Exh. 56. It is also further testified by him that the history was noted by one Dr. Nayak, who was then Houseman with Dr. Shah, and the history was recorded by Dr. Nayak under the instruction of Dr. Shah. It is further admitted by Dr. Shah in the cross-examination that the history was correctly recorded. This is the first version before an independent person, like medical officer, within the spell of two and half hours after the occurrence of the accident. This shows that the claimant sustained injuries on account of fall of heavy pipe on his foot and not on account of accident, as alleged. It is an admitted fact that no police complaint was registered. It is also an admitted fact that three persons accompanied the claimant to the hospital but they had not been examined. Had there been a vehicular accident, as alleged by the claimant, the claimant would not even remotely indicate to have sustained injuries on his foot on account of fall of pipe. It could not be presumed for a moment that somebody could be interested to make such a false narration in the history about the cause of injury. On the contrary, it can safely be deduced that the claimant must have given this history and it must be the real imprint of the true facts. Under these circumstances, the contention that the accident occurred on account of rash and negligent driving of the jeep owned by ONGC is not proved. Not only the version of the claimant is disproved but the version of the opponents that the injuries were the result of fall of heavy pipe on the foot of the claimant is succinctly established. The narration of or the statement of the claimant before an independent authority like a medical officer, as in the present case, is one of the important pieces of evidence and the Tribunal has rightly accepted it. Since there is a clear, concrete and clinching evidence emanated from the claimant himself, other oral rival versions of the witnesses would not assume any significant value.

8. In view of the facts and circumstances of the case, the impugned judgment and award is required to be confirmed. As there is no merit in this appeal, it deserves to be dismissed. Having regard to the facts and circumstances of the case the parties should be directed to bear their own costs.

9. However, a parting note may be expedient. There is no dispute about the fact that the claimant, unfortunately, sustained injuries on his right foot. The cause of

injuries, as alleged, is not proved. Nonetheless he was a workman of ONGC at the relevant point of time. He would be entitled to compensation under the Workmen's Compensation Act, had he selected the right forum under the said Act. Unfortunately, this court is helpless, as in this appeal under Section 110-D of the Act, compensation could be awarded only in the event of involvement of a motor vehicle in the accident and resultant injuries on account of rash and negligent driving on the part of the driver of the offending vehicle. However, the claimant could have preferred his claim under the Workmen's Compensation Act, 1923, as admittedly he was a workman of ONGC and injuries were sustained by the claimant during the course of his employment with ONGC. The claimant has so far pursued the remedy under a wrong forum. It will be open for him to move the competent Commissioner for Workmen's Compensation, for compensation under the provisions of the Workmen's Compensation Act, 1923.

10. In the result, the present appeal is dismissed with no order as to costs.

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