

Jamaluddin Vs. Bhinyaram and ors.

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Court : Rajasthan

Decided On : Jan-04-1980

Reported in : 1980WLN(UC)236

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Misc Appeal No. 15 of 1974

Appellant : Jamaluddin

Respondent : Bhinyaram and ors.

Disposition : Appeal dismissed

Judgement :

G.M. Lodha, J.

In connection with the accident of one Salauddin an award was given by the Motor Accidents Claims Tribunal, Jodhpur, for the amount of Rs. 5680.15 p. in favour of Salauddin through natural guardian Jamadluddin and against non applicant No. 2 Kansingh, non-applicant No.3 Vanguard Insurance Company and non applicant No.4 BakhtawarSingh. The Insurance Company has filed the appeal being S.B. Civil Misc. Appeal No. 31 of 1974 against the award. Jamaluddin has filed S.B. Civil Misc. Appeal No. 15 of 1974 for increase and enhancement of the amount awarded and Kansingh Las filed cross objection in this appeal of Jamaluddin

praying that the award given by the aforesaid tribunal, so far as it relates to him, should be set aside.

2. It is not in dispute that on 25-1-69, an accident happened on the road which runs between Stadium and Public Park of Jodhpur. Salauddin, aged about 10 years, was standing about 2' away from the foot path and a truck No. BJQ, 7893, which was alleged to be driven by Bakhtawarsingh, collided with Salauddin with the result that his leg was smashed by the wheel of the truck. The truck is said to be originally of Bhinyaram but later on, it was transferred to Kansingh and Bakhtawar Singh was the driver of the truck. The Vanguard Insurance Company was the insurer.

3. Before the Tribunal, neither Bhinyaram nor Kansingh contested the claim. Bakhtawarsingh has not filed any appeal and is not aggrieved by the award given against him.

4. The tribunal has come to a conclusion on the basis of the detailed discussion of evidence that the accident occurred because the vehicle was driven on the wrong side of the road and was also being driven rashly and negligently.

5. On the basis of the medical evidence and other evidence, the tribunal has found that Salauddin's leg was shortened permanently and there has been some other disablement of permanent character.

6. The main appeal of the Insurance Company was argued by Mr. Shisodia on behalf of Mr. Mardia. It has been argued that the finding of issue No. 3 is patently illegal and perverse and requires to be set aside. Issue No. 3 is as under.

Whether the non-applicant No. 3 is not liable to indemnify the applicants for the reasons mentioned in para Nos. 3 to 14 of his amended reply

The burden of proving this issue was kept on non-applicant No. 3. No evidence was adduced by the Insurance Company in relation to this issue. The submission of Mr. Shisodia is that even though no evidence was adduced by the Insurance Company, since the burden should have been on the applicant claimant, the issue cannot be decided against the Insurance Company.

7. The Tribunal has observed that the burden was laid on the Insurance Company because the reply in the written-statement was evasive. It has been further pointed out that at no stage of the proceedings, the Insurance Company challenged the framing of the issue and keeping its burden on the Insurance Company. Still more important is the observation of the tribunal which is as follows:

At the time of the final arguments, the Court suggested that non- petitioner No. 3 was free to move an application to amend the issue but the suggestion was ignored.

It was precisely on account of these circumstances that the Tribunal has decided this Issue in favour of the claimant and against the Insurance Company.

8 Mr. Shiscidia's contention is that whether a party applies for change of burden or not, it is the duty of the Court to frame correct issues and put the burden of proving on the party according to law. According to Mr. Shisodia the burden of proving that valid insurance also existed having clause of the nature, mentioned in the judgment of the Tribunal, should be on the claimant and the claimant cannot be allowed a decree or an award without discharging that burden. It was argued that mere omission of the Insurance Company to apply for changing the burden of proof cannot relieve the claimant of the responsibility of proving his case.

9. I have considered the submission of Mr. Shisodia. It is true that primarily, it is the duty of the claimant to show that there existed an insurance policy, on account of which the Insurance Company is liable to pay the amount of award. It is also true that in the absence of express stipulation to the contrary in the policy the moment an insurer parts with the vehicle, the policy relating to it also lapses. The Tribunal has held that Bhinyaram was the original owner of the truck and the insured and then transfer was made to Babulal and Kansingh. It has been held that unless the Insurance Company is able to show that there is no clause or express term in the policy mentioned above, the Insurance Company would remain liable to pay the amount even after the transfer and the policy would not lapse.

10. There is no doubt that the existence of a valid Insurance Policy is a sine qua non for the enforcement of the liability under the Motor Vehicles Act and the Insurance Company cannot be made liable till it is established that the covenant in the Insurance Policy contained a stipulation that the company would remain liable even when the ownership of the truck is transferred.

11. However, there are two important features of this case. The first is that as mentioned by the Tribunal through the proceedings, the Insurance Company did not raise any protest against the burden of proof and even when the Court volunteered and wanted the Insurance Company to move an application, if it so desired, to change the burden of proof, it ignored it. It is well established law that the question of burden of proof is a matter of procedure for proving a particular fact in issue under the Evidence Act and if a party fails to raise an objection against its wrong allocation at the proper time and at the proper stage, a judgment or decree cannot be reversed or set aside merely on the basis of abstract doctrine of burden of proof. In the instant case, the Tribunal has laid stress on the fact that even after the suggestion of the Tribunal, the Insurance Company failed to apply for alteration of the burden of proof. Coupled with this, yet another important factor against the Insurance Company is that the Insurance Company has got specific knowledge about the covenants of the Insurance Policy and usually, a claimant is a foreigner. A party, who has got specific and special knowledge about the fact in issue, is required to prove it and in any case, no grievance can be made by that party only on the ground that burden was kept on that party for proving it. In the instant case, the question, whether the Insurance Policy had an express stipulation mentioning that the validity of insurance and the liability for payment in case of accident would continue even on the transfer of the truck by the original insurer, was a matter in special and specific knowledge of the Insurance Company. The entire record of the Insurance Policies alterations in them remains with the Insurance Company and if the company has withheld the same from the Court, it can do so at its own risk. In view of these two important features of this case, I am in complete agreement with the view of the Tribunal that the Insurance Company, having had no evidence and having withheld the Insurance Policy, has failed to prove issue No 3 in its favour.

12. In view of the above issue No 3 was rightly decided against the Insurance Company In favour of the claimant.
13. No. other point was argued or Pressed by Mr. Shisodia in this appeal on behalf of the Insurance Company.
14. Now, so far as Jamaluddin's appeal is concerned, Mr. Bhool appearing for him has submitted that the Tribunal was wrong in rejecting the claim for Rs. 1800/- as special diet, Rs. 300/- for attending of Haji Hohammed, Rs. 180/- for travelling allowances, Rs. 300/- for shop having remained closed and Rs. 300/- for the shock received due accident the amount of medical bills in relation to Ex. 3 to 38.
15. I have considered this aspect of the case and the appeal of Jamaluddin also. It may be noted that while deciding issue No. 2, the Trih.3 has allowed Rs.5,000/- as general damages and an amount of R8 688 15 for the amount spent on treatment. This general damages cover the loss in income of the business and earning and also the shock received by the injured and the permanent disability of shortening of the leg. Therefore the tribunal has correctly disallowed the individual separate claims for closing of the shop for 12 days and for the mental shock. There is no evidence on record to prove the expenditure on specie I diet of Rs. 1800/- and so also the amount alleged to have been Incurred on the attendance of Haji Mohammed and the travelling expenses. So far as medical bills Ex. 3 to 38 are concerned, they relate to the period of the pendency of the claim petition and, therefore, could not have been included In the claim filed by the claimant as they were not in existence on the date of filing of the original claim. How ever even then the Tribunal has taken them into consideration while assessing general damages and the amount of compensation of Rs. 5000/- includes that also That being so, no grievance can be made by the claimant on this score now in appeal.
16. Moreover, looking to the injuries caused and the nature of the accident, the amount allowed appears to be quite fair and reasonable and calls for no Interference in the appeal of the claimants also, which deserves to be dismissed.
17. Respondent Kansingh has filed a cross-objection in this appeal of Jamaluddin against the award passed against him. Mr. Bhoot, appearing, the appellants

Jamaluddin and Salauddin, during the arguments in the cross-objection, made it clear that the realisation of the amount of the award would be done from respondent No 3 Insurance Company first and that is to satisfy the cross objector Kansingh.

18. The result Kansingh has filed a cross-objection in this appeal of Jamaluddin and Vanguard Insurance Company as also the cross-objection of Kansingh are dismissed. There will be no order as to costs Kansingh has deposited an amount of Rs. 2,000/- in pursuance of the stay order of this Court. He may be allowed refund of this amount as soon as claimant Jamaluddin recovers the amount of award from the Insurance Company

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