

Munni Devi and ors. Vs. Babu Lal and ors.

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Court : Allahabad

Decided On : Apr-26-2010

Judge : Devi Prasad Singh and; Devendra Kumar Arora, JJ.

Appellant : Munni Devi and ors.

Respondent : Babu Lal and ors.

Judgement :

Devendra Kumar Arora, J.

1. This First Appeal From Order has been filed against the Judgment & Award dated 11.7.2008, passed by the Motor Accident Claims Tribunal/Addl. District Judge, Rae Bareilly, in Claim Petition No. 198 of 2006, Munni Devi and Ors. v. Babu Lal @ Barati and Ors.

2. Brief facts of the case, as culled out from the record of the appeal, are that husband of the appellant No. 1, Munni Devi, namely, Raju Chaurasia while he was going to have feast at the house of one Deshraj Yadav, met with a fatal accident with a motorcycle No. U. P. 33K/3453 in the evening of 8th July, 2006 in front of the house of E. D. situated in the campus of Dariya Mill. Raju Chaurasia succumbed to injuries on the spot. The said motorcycle was being driven by respondent No. 1 Babu Lal @ Barati Lal very rashly and negligently causing death of Raju Chaurasia. First Information Report of the said accident was lodged by brother of the deceased Raju Chaurasia, namely, Dileep Chaurasia at police

station Bhadokhar which was registered as case crime No. 137 of 2006, under Sections 279, 338, 304-A I.P.C. and subsequently Charge- sheet was submitted against the respondents.

3. In the instant case, appellant No. 1, Munni Devi is widow of deceased Raju Chaurasia, appellants No. 2 and 3 are parents of the deceased , appellants No. 4 and 6 are minor daughters of the deceased and appellant No. 5 is minor son of the deceased, under the guardianship of Smt. Munni Devi being mother. The aforesaid appellants preferred claim petition before the learned Tribunal.

4. The respondent No. 1, Babu Lal @ Barati Lal in his Written Statement, filed in claim petition before the Tribunal, submitted that he is owner of the said motorcycle but he had given his motorcycle to one Sri Ram Sumer of his village for going to his relation on 8th July, 2006 and who had returned his motorcycle on next day. It was further submitted that no accident took place with his motorcycle and at the time of the said accident the motorcycle was insured with respondent No. 3. He was also having valid driving license at the time of accident and his name is not Barati Lal. It was also submitted that the appellants claimed too much amount of compensation and the petition was filed on wrong facts.

5. The respondent No. 2, Ram Sumer reiterated the same facts before the Tribunal. He submitted that no accident took place from his motorcycle and he was having driving license on the alleged date of accident. The respondent No. 3 is Branch Manager of Bajaj Alliance General Insurance Company Ltd., Lucknow who had also filed Written Statement and submitted that the petition was not sustainable in the eyes of law and the appellants were not the legal heirs of the deceased and the deceased himself was responsible for his own carelessness. The Company is not responsible for death of the deceased.

6. The issues framed in this case before the Tribunal were; as to whether on 08.7.2006 due to rash and negligent driving any such accident took place with the Motorcycle of respondent No. 2 causing death of Raju Chaurasia, if yes, its effect?, whether motorcycle in question was being driven by Ram Sumer or by Barati Lal, as mentioned in the First Information Report?, whether driver of motorcycle was having valid driving license at the time of accident?, whether the

motorcycle in question was insured with the respondent No. 3 at the time of accident? If yes, its effect? Whether claimant/appellants are entitled to get compensation, if yes, what amount and from whom? And whether claimant/appellants are entitled to get any specific relief?

7. The appellant No. 1 Smt. Munni Devi got examined herself as P.W.1, Dilip Chaurasia as P. W. 2 and Raj Narain as P. W. 3. She also produced copies of F. I. R., Post-mortem Report, Insurance Policy and Death Certificate of deceased Raju Chaurasia.

8. The respondent Ram Sumer, on the other hand, submitted copies of Chargesheet, Site Plan of place of accident. No oral evidence was produced on his behalf. The respondent Babu Lal produced no oral evidence but he submitted Photostat copy of Registration Certificate of his motorcycle, Driving License of Ram Sumer and copy of Insurance Policy of respondent No. 3. The respondent No. 3, Ashok Kumar Singh has been examined as D. W. 1 and has produced copies of Insurance Policy, Inspection Report dated 10.2.2007, terms and conditions of Insurance policy and Panchayatnama of dead body of deceased Raju Chaurasiya.

9. After hearing learned Counsel for both the parties and after going through record of the case , the learned Tribunal came to the conclusion that the appellants have failed to prove that on 8th July, 2006, in the evening, deceased Raju Chaurasia while he was going to attend feast at the house of Deshraj Yadav, met with an accident with motorcycle No. UP 33K/3455 which was being driven by Ram Sumer rashly and negligently, resulting into death of deceased Raju Chaurasiya and accordingly decided issue No. 1 in negative. The Tribunal further came to the conclusion that the appellants also failed to prove that motorcycle in question was being driven by either by Barati lal or by Ram Sumer. Accordingly, issue No. 2 was also decided in negative. So far as issue No. 3 whether at the time of accident, driver of motorcycle was having valid driving license? is concerned, the learned Tribunal came to the conclusion that at the time of accident Ram Sumer was not having any valid driving license and this issue was also decided in negative. So far as issue No. 4 as to whether motorcycle in

question was insured at the time of accident, has been decided by the Tribunal in affirmative but learned Tribunal asserted that since the claimant/appellants have failed to prove the accident, as such it does not effect the determination of compensation. Similarly, issues No. 5 & 6 were also decided in negative and the appeal was dismissed .

10. We have heard learned Counsel for both the parties and have perused the record.

11. Learned Counsel for the appellants argued that the learned Tribunal has adopted a very technical approach while dealing with the oral evidence led on behalf of the appellants and has applied the principles of criminal jurisprudence in the matter. It has been further submitted by learned Counsel for the appellants that the sole ground of dismissal of the claim petition, given by the learned Tribunal is that none of the witnesses examined on behalf of the appellants is the eye witness of the accident, hence, the Tribunal came to the conclusion that the appellants failed to prove that the accident took place from the motorcycle No. U. P. 33-K/3455 being driven by the respondent No. 2, Ram Sumer.

12. Learned Counsel for the appellants has placed reliance upon the decisions reported in : 1995 ACJ 520 (D.B.), Delhi Transport Corporation v. Brijesh Kumar and 2001 ACJ 1416 (D.B.) National Insurance Company v. Mahfooza Begum and submitted that the learned Tribunal failed to consider that the Tribunal is not a Civil Court, hence, the strict Rules of C. P. C. or the Evidence Act do not apply to a Tribunal. Learned Tribunal also failed to consider that the Motor Vehicles Act, 1988 is a beneficial legislation and whenever two views are possible after the appreciation of the evidence on record, the one which serves the object of the legislation, should be accepted.

13. Learned Counsel for the appellants also submitted that while passing the impugned award, learned Tribunal failed to consider that in compensatory proceedings before the claim tribunals originating in realms of social justice to the victims of the road accident, the strict rules of pleading as envisaged in C. P. C. do not apply. Learned Tribunal has erred in disbelieving the testimony of independent witness P. W. 3 Raj Narain whereas he has categorically stated that he had seen

the accident. Learned Tribunal has dismissed the claim petition of the appellants by applying the standard of appreciation of evidence required for criminal trials, where the prosecution has to prove its case beyond all reasonable doubts, whereas in a motor accident claim petition the standard of proof is not required and claim petition ought to have been decided on the basis of the preponderance of probabilities and the circumstances emerging out from the pleadings and the evidence led by the parties. In this regard, learned Counsel for the appellants has placed reliance upon a decision reported in 2006 (24) LCD 670 D.B. Subhan Ali and Anr. v. Saleem Ahmad and Anr.

14. Learned Counsel for the appellants further submitted that the deceased was about 40 years' old at the time of his death and he left behind his parents, wife and three minor children who have no source of income. It is also submitted that from evidence on record it is proved that the deceased was earning Rs. 7000/-per month from his betel shop and from agriculture, hence, multiplier of at least 16, as provided in the II Schedule of the Motor Vehicles Act, 1988, should have been applied while determining the compensation to be paid to the appellants. In view of the above, the appeal deserves to be allowed.

15. On the other hand, learned Counsel for the respondents No. 1 and 2 submitted that the learned Tribunal has found the statement of P. W. 2 not reliable as he was not an eye-witness to the incident. He further submitted that P.W. 3 reached the spot after three minutes and he was also riding another Motorcycle. According to Site Plan, at the time of accident, the deceased was walking on right side of road which is wrong side of the road. The First Information Report was lodged against the respondent No. 1 whereas chargesheet was submitted against the respondent No. 2. Learned Counsel for the respondent No. 1 also submitted that the appellants' case is that the deceased was going to attend a function but in Panchayatnama it has come that the deceased was wearing only a shirt and underwear and in that dress it was not possible for the deceased to go to attend a party. The motorcycle in question was insured with the respondent No. 3 w.e.f. 10.4.2006 to 09.4.2007 and the appellants failed to prove the negligence on the part of the answering respondent and the driver was having valid license at the time of accident.

16. The perusal of the impugned judgment & award reveals that the learned Tribunal adopted a very technical approach while appreciating the oral evidence led on behalf of the claimant-appellant and dismissed the claim solely on the ground that none of the witnesses examined on their behalf was eye witness of the accident and came to the conclusion that the appellant-claimant failed to prove that the accident took place from the motorcycle in question.

17. This Court in the matter of Delhi Transport Corporation v. Brijesh Kumar and Anr. reported in 1995 ALJ 520 pleased to observe that:

the strict rules of pleadings as envisaged by the CPC do not apply to the compensatory proceedings before the Claim Tribunals originating in realms of social justice to the victim of road accidents. The basic requirement is that a petitioner should broadly set up his case to apprise the opposite party of the necessary particulars of accident in the format provided by the Rules framed under the Motor Vehicles Act.

18. It has also been held in National Insurance Company Ltd. v. Mahfooz Begam and Ors. reported in 2001 ACJ 1416 (DB) that a Tribunal is not a regular Civil Court and, hence, the strict rule of CPC and Evidence Act do not apply to a Tribunal.

19. The Division Bench of this Court in the matter of Subhan Ali and Anr. v. Salim Ahmad and Anr. reported in 2006 (24) LCD 670 while discussing the standard of proof required in deciding the accident claims pleased to held that claim petitions have to be decided on the basis of preponderance of probabilities. The relevant para 12 of the same reads as under:

In our opinion, this is not a sufficient ground for rejection of evidence of a witness, specially, when he was subjected to lengthy and searching cross-examination and no material could be elicited from him to discredit his testimony. The respondent No. 1, who was driving the vehicle, had no courage to enter the witness box and deny the case pleaded by the appellants. It appears that the learned Tribunal has applied the standard of appreciation of evidence required for criminal trials, where the prosecution has to prove its case beyond all reasonable doubts, whereas in a

motor accident petition that standard of proof is not required. Such petitions have to be decided on the basis of the preponderance of probabilities and the circumstances emerging from the pleadings and the evidence led by the parties. The case pleaded by the respondent No. 1 in his written statement was that the deceased himself collided with the rear part of the jeep. If it was so, he should have come in the witness box to depose this fact. In absence of any evidence to the contrary, the rejection of the evidence of P.W. 2 Vijay Kumar by the learned Tribunal was not justified. Moreover, there was no material against this witness to dub him as an unreliable witness. It is true that he was the sole witness to prove the manner of accident, but law does not require any particular number of witness to prove a fact. One credible witness outweighs the testimony of number of witnesses. Law provides the cross-examination as one of the mode in which the credibility of a witness can be impeached. But, the cross-examination is not the only mode for impeaching the credit of a witness. It may also be done by other ways e.g. by giving independent evidence of the following facts as permitted and provided under Section 155 of the Evidence Act.

20. In the case of Pushpabai Purshottam Udeshi and Ors. v. Ranjeet Ginning & Pressing Co. (P) Ltd. and Ors. reported in : (1977) 2 SCC 745 it has been observed by their lordships that:

The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happen to establish negligence on the part of the defendant. This hardship is sort to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the word *res ipsa loquitur* is that the accident ' speaks for itself' or tell its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at page 306 states ' The maxim *res ipsa loquitur* applies whenever it so improbable that such an accident would jury could find without further evidence at it was so caused. In Halsbury's

Laws of England, 3rd Ed Vol. 28, at page 77, the position is stated thus ' An exception to the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural interference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence, tells its own story, of negligence on the part of the defendant, the story so told being clear and unambiguous 'Where the maxim is applied the burden is on the defendant to show either that in fact he was negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care. Applying the principles stated above, we have to see whether the requirements of the principle have been satisfied.

21. Subsequently, in the case of *Syad Akbar v. State of Karnataka* reported in AIR : (1980) 1 SCC 30, their lordships of Hon'ble Supreme Court while applying the principle of '*res ipsa loquitur*'. held as under:

It is now to be seen, how does '*res ipsa loquitur*' fit in with the conceptual pattern of the Indian Evidence Act. Under the Act. the general rule is that the burden of proving negligence as cause of the accident, lies on the party who alleges it. But that party can take advantage of presumption which may be available to him, to lighten that burden. Presumptions are of three types:

(i) Permissive fact. presumptions or presumptions of fact

(ii) Compelling presumptions of law (rebuttable).

(iii) Irrebuttable presumption of law or '*censuris*proof'.

Classes, (i) (ii) and (iii) are indicated, in Clauses (1), (2) and (3) respectively of Section 4, Evidence Act '*Presumptions of fact*' are inferences of certain facts patterns drawn from the experience and observations of the common course of nature, the constitution of the human mind, the springs of human action, the usage and habits of society and ordinary course of human affairs. Section 114 is a

general section dealing with presumption of this kind. It is not obligatory for the Court to draw a presumption of fact. In respect of such presumption, the Act allows the judge a discretion in each case to decide whether the fact which under Section 114 may be presumed has been proved by virtue of that presumption.

Such simplified and pragmatic application of the notion of *res ipsa loquitur*, as a part of the general mode of inferring a fact in issue from another circumstantial fact, is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing aperringly towards the guilt of the accused. Thirdly, the circumstances shown make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt.

22. Similarly, the Hon'ble Supreme Court in the matter of Smt. Kaushnuma Begum and Ors. v. The New India Assurance Co. Ltd. and Ors. reported in : (2001) 2 SCC 9 while discussing the Rule of strict liability preponderance in *Rylands v. Fletcher* pleased to observe in paras 11, 12, 13 & 14, which are being quoted as below:

11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in *Rylands v. Fletcher* (supra) can apply in motor accident cases. The said Rule is summarized by Blackburn, J. thus:

The true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there any thing likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God, but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.¹

13. The House of Lords considered it and upheld the ratio with the following dictum.

We think that the true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major or the act of God; but, as nothing of this sort exists, here, it is unnecessary to inquire what excuse would be sufficient.¹⁴ The above Rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. Winfield on Tort has brought out even a chapter on the 'Rule in Rylands v. Fletcher'. At page 543 of the 15th Edn. of the celebrated work the learned author has pointed out that over the years Rylands v. Fletcher has been applied to a remarkable variety of things; fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation....'. He has elaborated seven defences recognised in common law against action brought on the strength of the rule in Rylands v. Fletcher. They are:

(1) Consent of the plaintiff i.e. volenti non fit injuria..

(2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape.

(3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply.

(4) Exercise of statutory authority i.e the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise.

(5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility.

(6) Default of the plaintiff i.e. if the damage is caused solely by the act of default of the plaintiff himself, the rule will not apply.

(7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage' which is the natural consequence of its escape.'

In *Gujrat State Road Transport Corporation, Ahmedabad v. Ramanbhai, Prabhatbhai and Ors.* reported in : 1987 (3) SCC 234, while considering the question regarding the applicability of Rule in *Ryland v. Fletcher* in the cases arising out of motor accidents, observed as under Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and death are taking place on the roads on account of the motor vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability define in *Rylands v. Fletcher*. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and Run' cases where the drivers of motor vehicle who have caused the accident are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorists whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the death and injuries cause in road accidents there has been a

continuous agitation through out the world to make the liability for damages arising out of motor vehicle accident as a liability without fault'.

23. In the present case, the admitted position is that death of deceased was caused due to the accident and there were two witnesses PW-2 and PW-3 who may not be 'eye witnesses' in the strict sense but they are the witnesses who reached at the place of accident just after the accident and as soon as the injured died in their presence, the motorcyclist on knowing the death of injured, ran away but number of motorcycle was noted down by the P.W-3. However, the evidence of P. W. 2 & P. W.-3 was not appreciated by the learned Tribunal.

24. This is the admitted fact that charge sheet has been filed only against the respondent No. 2 by the police. It is also admitted fact that no oral evidence has been adduced by the respondents No. 1 and 2 to deny the case, claimed by the appellants.

25. On the basis of the analysis of the aforesaid judgments as well as by applying the principle of 'res ipsa loquitur' it can safely be said that 'the accident speaks itself' and or tells its own story and once the appellants/ claimants proved the factum of accident by oral as well as documentary evidence, it is sufficient and nothing more is required to prove the accident. Now, it was for the defendants No. 1 & 2 to establish that the accident has taken place due to some other cause than their own negligence.

26. A perusal of the judgment of the learned Tribunal reveals that the evidence has been appreciated in a very technical and strict manner by over looking the fact that the learned Tribunal was not acting as a regular civil court and, hence, the learned Tribunal was not bound to observe the strict rule of C.P.C. or Evidence Act. It was incumbent upon the learned Tribunal to examine the other factors also and not only to confine to only issue of there being no other eye witness in the strict sense.

27. We are, therefore, of the considered view, that this matter requires re-examination and re-appreciation of the evidence.

28. We, therefore, set aside the impugned Judgment and Award dated 11.07.2008, passed by MACT/ Additional District Judge, Rai Bareli and remand the matter to the trial court with a direction to decide the claim petition afresh after providing opportunity to all the concerned parties, within the period of six months from the date of receipt of certified copy of this order.

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