

Buta Ram Vs. Maya Devi and ors.

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Court : Jammu and Kashmir

Decided On : May-22-2006

Reported in : 2006(2)JKJ489

Judge : Mansoor Ahmad Mir, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 92A(1), 95, 110, 110CC, 158(6) and 166(3); ;General Clauses Act - Section 6A

Appeal No. : CIMA No. 221/1999

Appellant : Buta Ram

Respondent : Maya Devi and ors.

Advocate for Def. : Raghu Mehta, Adv. for respondent Nos. 1 to 3 and; Baldev Singh, Adv. for respondent No. 4

Advocate for Pet/Ap. : S.C. Mansotra, Adv.

Judgement :

Mansoor Ahmad Mir, J.

1. This appeal is directed against the award dated 12-7-1999 passed by the Motor Accident Claims Tribunal, Kathua in a claim petition titled as Maya Devi and Ors. v. Lalman and Ors. (which shall be hereinafter referred to as impugned order)

whereby and where-under compensation to the tune of Rs. 87,600/- with interest at the rate of 12% per annum from the date of institution of the claim petition till its realization come to be granted in favour of the claims against the owner of the offending vehicle.

2. It is useful to refer respondents No. 1, 2 & 3 as the claimants; appellant as insured;-respondent No. 4 as insurer and respondent No. 5 as driver of the offending vehicle, hereinafter.

3. It appears that the claimants have been dragged from pillar to post and post to pillar and thereby stand deprived of the benefit of social legislation for pretty long time. The delay crept in has not only deprived the claimants from the benefit of social legislation but has defeated the aim and object of the social legislation. The purpose, aim and object of granting compensation is to save the claimants/victims from starvation, vagrancy, destitution and other social evils. In order to achieve the said purpose, the Courts are under legal obligation to decide such matters without delay. But the case in hand speaks of really a terrible commentary, disclosing how the case came to be dealt with.

4. It is useful to give the brief resume of the facts of the case herein.

Claimants filed a claim petition on 29-1-1986 for awarding compensation. Same came to be dismissed by the Tribunal vide order dated 22-12-1990. Claimants feeling aggrieved of the said award preferred an appeal before this Court which came to be allowed vide order dated 9-3-1992, and there-after Tribunal passed another order vide judgment dated 22-12-1992 which was allowed vide judgment dated 9-2-1998 passed by this Court. The case came to be remanded back to the Tribunal. Appellant-owner came to be arrayed as party respondent. There-after on the pleadings of the parties following issues came to be framed:

1. Whether on 10-11-1985 respondent No. 1 who was the owner of the Tractor No. 6238 and driving the vehicle rashly and negligently at Chadwal More, on Jammu Pathankote Road, knocked down the deceased Ram Lal resulted his death on spot? OPP

2. In case issue No. 1 is proved in affirmative, to how much claim of compensation the petitioner is entitled and from whom OPP

3. Relief.

5. After hearing the learned Counsel for the parties the Tribunal passed the impugned award saddling the owner with the liability and held that the insurer was not under any legal obligation to indemnify. Aggrieved of the impugned award the owner of the offending vehicle preferred this appeal.

Learned counsel for the appellant raised the following points:

(i) That the claim petition was barred by limitation so far as the appellant is concerned for the reason the appellant was not party to the liss but came to be arrayed as party-respondent in terms of the order of this Court dated 9-2-1998;

(ii) That the claimants have failed to prove that the driver was driving the offending vehicle rashly and negligently;

(iii) Rate of interest awarded is not in terms of the Apex court judgments and the interest had to be awarded from the date of arraying the owner as party-respondent in the liss.

6. Learned Counsel for the claimants argued that the cause of death of deceased, namely, Ram Lal was out come of the use of motor vehicle. It was the duty of the owner and the driver to have taken extra-ordinary care before plying the offending vehicle. The insurer was to be saddled with the liability because the insurance policy was in force at the time of accident. Learned Counsel for respondent No. 4 argued that the gratuitous passenger is not included in the insurance policy.

Considered. The following facts are admitted:

(i) Ram Lal deceased died due to vehicular accident.

(ii) The age of the deceased was 55-57 years;

(iii) The vehicle was insured at the relevant point of time;

There is ample evidence on the file that due to mechanical defect the accident took place and the deceased who was traveling in the Tractor, the offending vehicle, sustained injuries and succumbed to the injuries on spot;

Two witnesses of the claimants have deposed that the driver had driven the vehicle rashly and negligently.

7. The question which emerges for consideration is whether the claim petition was maintainable in the given circumstances? It is beaten law of the land that if the accident is caused due to use of motor vehicle, the claim petition is maintainable. It is proved that driver and owner of the offending vehicle had not taken due care and caution. That means that they had not taken due care while using the vehicle. There are catena of judgments of the Apex Court as well as of our own High Court on the point that when accident is out come of Bomb Blast, the claim petition is maintainable and the victims are entitled to compensation. This Court has observed in case Smt. Sneh Sharma and Ors. v. Purshotam Singh 1996 KLJ 457 as under:

While construing the expression arising out of the use of a motor vehicle in Sub-section (1) of Section 92A of the Act, regard will have to be had to the fact that expressions to the same effect were also contained in Sections 95 and 110 of the Act.

8. Apex Court also taken the same view in case Samir Chanda v. Managing Director, Assam State Transport Corporation : AIR 1999 SC136 . Apex Court has also observed in case Jatinder Kumar v. Oriental Insurance Co. Ltd. : AIR 2003 SC4161 that if the accident is out come of mechanical defect, even then the claimants are entitled to compensation and claim petition is maintainable. It is profitable to reproduce para 10 of judgment:

10. We notice that in the impugned order National Commission has placed reliance on the judgment of this Court in the case of Ned India Assurance Company (Supra) which in our opinion, has no bearing on this aspect of the case in hand. This Court in the said case held that the fake driving license when renewed genuinely, does not acquire the validity of a genuine licence. There can

be no dispute on this proposition of law. But then the judgment of this Court in the case of New India Assurance Company (Supra) does not go to the extent of laying down a law which empowers the Insurance Company to repudiate any and every claim of the insured (appellant) merely because he had engaged a driver who did not have a valid licence. In the instant case it is the case of the parties that fire in question which caused damage to the vehicle occurred due to mechanical failure and not due to any fault or act or omission of the driver. Therefore, in our considered opinion Insurance Company could not have repudiated the claim of the appellant.

9. In the given circumstances, I am of the considered view that the claim petition is maintainable and the findings returned by the Tribunal vis-à-vis issue No. 1 is correct I find that no error has been committed by the Tribunal.

10. The argument of the learned Counsel for the appellant is that the claim petition was to be dismissed on the ground of delay i.e. limitation is devoid of force for the following reasons:

(i) Sub-clause (3) of section 166 of the Motor Vehicles Act came to be deleted by the way of amendment. What was the purpose of deletion of the said Sub-clause (3) of Section 166 of the Motor-Vehicles Act which provided within which period a claim petition was to be filed. To me it appears that the purpose is just to achieve the aim and object of granting compensation to the victims so that they are not brought in streets and compelled to go for social evils. It was felt necessary that the delay should not come in the way of claiming compensation. The Apex Court has held in case *Dhannalal v. D.P. Vijayvargiya and Ors.* : AIR 1996 SC2155 that delay should not come in the way of granting compensation. It is useful to reproduce Para 7 of the judgment: In view of Sub-section (6) of Section 158 of the Act the officer incharge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also to be forwarded to the concerned insurer. It also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days or receipt of such copy forward the same to the claims. Tribunal and insurer. In this background the deletion of Sub-section (3) from Section 166 should be

given full effect so that the object of deletion of said section by the Parliament is not defeated. If a victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from Tribunal to this Court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14-11-1994 in respect of the accident which took place on 4-12-1990 in view of the Amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this Court cannot be thrown out on the ground of limitation.

Further in case *New India Assurance Co. Ltd. v. C. Padma* AIR 2003 SC 4394, Apex Court observed as under:

It is noted that the Parliament realized the grave injustice and injury caused to heirs and legal representatives of the victims of accidents if the claim petition was rejected only on ground of limitation. Thus, the different intention clearly appears and Section 6A of the General Clauses Act would not apply.

11. I am of the considered view that technicalities and mystic maybes have no role to play while deciding the claim petition. It is to be borne in mind that the procedural wrangles and tangles should not come in the way.

12. Coming to the third point that interest should have been granted at the rate of 9% instead of 12% and from the date the appellant/claimant came to be arrayed as party respondent in the claim petition is forceful. Apex Court has observed in various judgments that interest should be granted at the rate of 9% from the date of claim petition. It is profitable to reproduce para 8 of the case *United India Insurance Co. Ltd. v. Narendra Pandurang Kadam and Ors.* : AIR 1995 SC782 , wherein Apex Court observed as under:

8. Ideally a claim should be settled as soon as it is made. Because of the delay in settlement of the claim by legal process or otherwise interest may be awarded but such interest cannot be from a date earlier than the date of the claim. The language of Section 110-CC is clear that the interest can be awarded by the Court or Tribunal at such rate as it thinks fit but the interest cannot be made payable from a date earlier than the date of the claim. The contention of the appellant on this point appears to be prima facie correct.

Viewed thus, it is hereby held that interest can be granted from the date owner came to be arrayed as party.

13. It is admitted fact that the appellant came to be arrayed as party respondent in the claim petition in terms of the judgment dated 9-2-1998, thus the interest was to be granted at the rate of 9% per annum and, from 9-2-1998 till its realization. Thus, I deem it appropriate to modify the award.

14. The argument of the learned Counsel for the claimants that insurer was to be saddled with the liability is devoid offeree for the following reasons:

(i) That in the insurance policy the risk of covering gratuitous passenger is not included.

(ii) The Tribunal while relying upon the Apex Court judgment reported in 1999 Vol-I ACC 112 (SC held that insurer was not liable because the deceased was a gratuitous passenger.

(iii) The learned Counsel for the appellant/owner has not addressed any argument on this issue.

15. Having glance of the above discussion, I am of the view that the findings returned by the Tribunal need no interference. In the given circumstances the appeal is partly allowed and the claimants are held entitled to Rs. 87.600/- along with interest at the rate of 9% p.a. as indicated hereinabove. Accordingly impugned award is modified. Send down the record along with the copy of the judgment.

