

Meenu Devi and ors. Vs. Sudesh Kumar and ors.

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Court : Delhi

Decided On : Mar-24-2011

Judge : Reva Khetrapal, J.

Acts : Code of Civil Procedure (CPC) - Order 41 Rule 27

Appeal No. : MAC. APP. 405/2008; MAC. APP. 169/2009

Appellant : Meenu Devi and ors.

Respondent : Sudesh Kumar and ors.

Advocate for Def. : Mr. R.K. Kohli; Mr. K.S. Verma; Mr. L.K. Verma, Advs.

Advocate for Pet/Ap. : Mr. Navneet Goyal, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

CM No.4465/2009 in MAC. APP. 169/2009

This is an application praying for condonation of 241 days' delay in filing the appeal. In view of the ground given in the application, the delay is condoned.

The application stands disposed of.

MAC. APP. 405/2008 and MAC. APP. 169/2009 and CM Nos.4463/2009 (stay) and 12242/2009 (under Order XLI Rule 27 CPC)

1. By way of this order, it is proposed to decide two appeals arising out of the same accident, being MAC APP. No.405/2008, titled Smt. Meenu Devi and Ors. vs. Sudesh Kumar and Ors., filed by the appellants for enhancement of the compensation awarded to them in Suit No.992/2000 on account of the death of late Shri Dalip Kumar Verma, who died in a motor vehicular accident, and MAC. APP. No.169/2009, titled Rajesh Kumar vs. Meenu Devi and Ors., filed by the owner of the truck which was held to be one of the offending vehicles which caused the accident, resulting in the death of late Shri Dalip Kumar Verma (hereinafter referred to as "the deceased").

2. The case of the appellants in MAC. APP. No.405/2008 is that on 20/21.08.1997, the deceased along with other members of his family was going to Haridwar from Delhi by Maruti Van No.DL-2C-J 4854, which was being driven by one Shri Manjit Singh. At about 12.30 a.m., in the night intervening 20th/21st August, 1997, when the said Maruti Van reached near the Petrol Pump, opposite Satish Hotel, Modi Nagar U. P., it was hit by a truck bearing registration No.HR- 26-5387, which was being reversed and which hit the van on its left side. On account of the forceful impact, all the occupants sustained grievous injuries. One of the occupants Shri Rajbir Singh died at the spot while the other occupants were removed to Batra Hospital where, on 24.09.1997, the deceased succumbed to his injuries. The driver of the Maruti Van Shri Manjit Singh also died in the hospital.

3. A claim petition was filed by the legal representatives of the deceased (Dalip Kumar Verma), wherein the owner of the Maruti Van was impleaded as the respondent No.1, the insurer of the Maruti Van was impleaded as the respondent No.2 and the owner of the truck was impleaded as the respondent No.3. It was claimed that all the respondents were liable to pay the compensation to the petitioners in the sum of ` 10 lakhs along with interest at the rate of 18% per annum, jointly and severally.

4. The claim of the appellants was contested by the respondents No.2 and 3. The respondent No.1, the owner of the Maruti Van did not choose to contest the petition or to file any written statement, and was proceeded ex parte in default of appearance vide orders dated 13th July, 2001. The respondent No.2, though admitted that the Maruti Van was insured with it on the date of the accident, contested the claim principally on the ground that the offending vehicle was truck No.HR-26-5387 and not the Maruti Van. The respondent No.3, on the other hand, contested the claim of the appellants on the ground that the aforesaid truck was not the offending vehicle and no case had been made out against the driver of the truck by the police. According to the respondent No.3, the police after making enquiries about the accident came to the conclusion that the truck was parked on the left side of the berm of the road and the van driver, who was driving the van under the influence of some intoxication, had hit the stationary truck from behind. It was claimed that the truck was parked with due indication of light and with bricks and stones around it, as it was not in working order.

5. On the pleadings of the parties, the following issues were framed in the claim petition by the learned Motor Accident Claims Tribunal:

"1. Whether victim deceased Dalip Kumar Verma suffered fatal injuries on 20.8.1997 when travelling in a Maruti Van was hit by a truck No: HR 26 5387 when put in a reverse gear in Modi Nagar, UP near Satish Hotel at around 12.30 midnight and accident occurred due to rash and negligent driving on the part of driver of the truck driving vehicle with the consent and authority of its owner respondent No:3? OPP-2.

2. Whether accident described in Issue No:1 took place entirely due to fault and negligence on the part of driver of the Maruti Van as Maruti Van struck against truck HR 26 5387 on its back side after it had been parked on the left side of the road with due indications? OPD-3

3. Whether respondent No:1 and respondent No:2 owner and insurer of the Maruti Van could also be held liable in this award? OPP.

4. Whether petitioners are entitled to compensation as prayed. If so, to what amount and against which of the respondents?
6. In order to establish and substantiate their claim, the appellants in MAC. APP. No.405/2008 examined PW1 Shri Rajesh, an eye witness to the accident, PW2 Smt. Meenu Devi, the wife of the deceased and PW3 Shri Badri Prashad, the father of the deceased. None of the respondents chose to adduce any evidence or to challenge the evidence produced by the appellants.
7. The learned Motor Accident Claims Tribunal on appraisal of the evidence came to the conclusion that the accident was the outcome of composite negligence on the part of the driver of the van, who had also expired in the accident, as well as the driver of the truck, who had failed to take care about the traffic moving behind it while he was reversing his truck. The Tribunal observed that though the respondent No.3 had taken the plea that the truck was parked on the road side as it was not in a working condition, no evidence had been brought on record by the respondent No.3 to prove the defence taken by him in his written statement. On the other hand, PW1, the Tribunal noted, had testified that the driver of the van Manjit Singh was driving at a normal speed when suddenly the truck in question reversed and hit the Maruti Van on its left side. The Tribunal further noted that the testimony of PW1 remained unrebutted and the gravity of the impact caused by the reversing truck could be seen from the photographs of the van, which had been placed on record. The Tribunal also took judicial notice of the fact that no case had been registered by the police against the truck driver, and the respondent No.1, the owner of the van had also not filed written statement despite several opportunities granted to him. However, the Tribunal observed that even if it is believed, keeping in view the unrebutted testimony of PW1 that the van had struck against the reversing truck, it was reasonably expected from the driver of the van to take care of traffic ahead of him. From the photographs of the van, the Tribunal noted, it also stood established that the front portion of the van was badly damaged in the accident, which was possible only if the van was also being driven at a high speed. Thus, it came to the conclusion that this was a case of composite negligence on the part of the driver of the van, who had also expired in the accident, as well as the driver of the truck, who had failed to take care about the

traffic moving behind it while he was reversing his truck. In the facts and circumstances, 50% of the negligence was held to be attributable to the truck driver and 50% to the driver of the van.

8. Aggrieved by the aforesaid findings of the Tribunal, the respondent No.3, i.e., the owner of the truck, as noted hereinabove, preferred an appeal with an application under Order XLI Rule 27 CPC, being MAC. Appeal No.169 of 2009 and CM No.12242/2009. In the application, it was prayed that certified copies of the FIR registered against the truck driver by Police Station Modi Nagar, Uttar Pradesh be taken on record, being FIR No.55/98 under Sections 279/304A, along with the cancellation report filed by the Investigating Officer before the learned Magistrate and the order of the Magistrate's Court at Ghaziabad accepting the said report. It is submitted that the aforesaid documents could not be placed on record before the Tribunal on account of the negligence of the previous lawyer of the respondent No.3, and this had resulted in an incorrect finding rendered by the learned Tribunal that no FIR was registered by the police against the driver of the offending truck. Notice of this application was issued by this Court to the counsel for the Insurance Company as well as to the counsel for the claimants, but no response to the said application was filed. This being so, the prayer for taking on record the aforesaid certified copies was accepted and the said documents were taken on record.

9. Relying upon the aforesaid documents, the learned counsel for the owner of the truck contended that as per the cancellation report filed by the Investigating Officer, which was accepted by the concerned Magistrate at Ghaziabad, the accident was a mishap occasioned by the fact that the van driver had fallen asleep and hit the stationary truck parked on the side of the road.

10. Having carefully considered the evidence on record, I am unable to agree with the aforesaid contention of the counsel for the owner of the truck (who is the respondent No.3 in MAC. Appeal No.405/2008 and the appellant in MAC. Appeal No.169/2009) for the reason that there is unrebutted evidence on record in the instant case that the accident was occasioned by the driver of the offending truck reversing his vehicle carelessly and negligently. PW1 Shri Rajesh, in his affidavit

by way of evidence, clearly stated that on 20 th August, 1997, he along with Shri Dalip Kumar Verma and others, including Babu Lal, Rajbir, Smt. Kanti and Kumari Geeta, was going to Haridwar by Maruti Van No.DL-2C-J 4854, which was being driven by Shri Manjit Singh. At about 12.30 a.m., they reached Modi Nagar where they took snacks, tea, etc. from a road side dhaba and thereafter they reached the Petrol Pump opposite Satish Hotel. The driver of the van Manjit Singh was driving at a normal speed when suddenly the offending truck reversed and hit the Maruti Van on its left side. The impact caused by the truck was so forceful that all the occupants sustained grievous injuries.

11. At the risk of repetition, it may be noted that this witness was not cross-examined by any of the respondents, including the counsel for the offending truck, though opportunity for the aforesaid purpose was afforded by the learned Tribunal. The learned Tribunal has deemed it fit to believe the testimony of this witness and no cogent reason has been given before me to enable me to disbelieve the same, more so when his testimony is borne out by the photographs placed on record, which are also not in dispute. The learned Tribunal has, no doubt, observed in the course of rendering its judgment that no FIR was registered against the truck driver, which position is sought to be disputed before this Court by placing on record the cancellation report of the said FIR. Be that as it may, the contents of the cancellation report filed by the Investigating Officer cannot be accepted by this Court in the face of unrebutted evidence on record that the accident was the result of the negligence of the truck driver and at any rate, the truck driver was as much to blame for the accident as the van driver. Had the owner of the truck appeared in the witness box to state that his truck was stationary at the time of the accident as it was out of order or produced any other evidence to substantiate the stand taken by him in his written statement, the position may have been different, but his avoidance of the witness box clinches the issue, more so as he has chosen not to challenge the testimony of the eye-witness PW-1 Shri Rajesh. The finding rendered by the learned Tribunal with regard to the composite negligence of both the vehicles to the extent of 50% each is accordingly upheld.

12. At this juncture, it is deemed expedient to note the contention of Mr. Navneet Goyal, the learned counsel for the appellants in MAC. APP. No.405/2008

(claimants in Suit No.992/2000) with regard to apportionment of liability between the owner of the truck and the owner of the van. Mr. Goyal contended that it is well established that when a person is injured or dies as a result of the negligence of two or more wrong doers, each wrong doer is jointly and severally liable for the entire damages. The injured person/victim(s) has the choice of proceeding against all or any of the wrong doers and need not establish the extent of responsibility of each wrong doer separately. His submission is that though the apportionment of liability is not taboo and is permissible in a case of composite negligence, yet it is open to the claimants to recover the whole amount of compensation from one of the tortfeasors where the other one defaulted and it would be open for the said tortfeasor to claim rateable distribution from the defaulting one. In this context, reference was made by him to the judgment of the Supreme Court rendered in the case of Andhra Pradesh State Road Transport Corporation and Anr. vs. K. Hemalatha and Ors. reported in 2008 ACJ 2170 and to a Division Bench judgment of this Court in Angoori Devi and Ors. vs. Megh Raj and Ors. reported in 2003 ACJ 293, wherein it was held as under:

"15. A plain reading of this provision leaves no scope for doubt that it extends the jurisdiction of Tribunal to awarding compensation amount against all or some of the tortfeasors or even one. Where Tribunal finds that there are two vehicles involved in the accident and their drivers are found negligent, it is under a statutory mandate to specify and apportion the amount proportionate to the responsibility of the owner and driver of one vehicle and that of the other. If both vehicles are insured, then it would have to specify the amount payable by each, be that called apportionment or whatever. It could as well as be that one vehicle was insured and the other not insured, it would still have to undertake the exercise of specifying the amount payable by the insurer of one vehicle and the owner of the other as the case may be. 16. All this appears to be a much ado about nothing because Tribunal by doing so only specifies inter se liability of owner/drivers of two vehicles found negligent to cause accident and it does not affect the claimant(s) anyway, be it a case of composite negligence because he/she is entitled in law to recover the entire compensation amount from all or anyone of the tortfeasors jointly and severally. There is no problem where both sets of tortfeasors would satisfy the award. But if one of them failed, claimant would be within his/her rights to recover

the whole amount from the other. It would be then for that party to claim rateable distribution from the defaulting one."

13. No decision to the contrary was cited at the bar and the irresistible conclusion appears to be that the appellants/claimants in a case of composite negligence such as the present one are entitled in law to recover the entire compensation amount from all or any of the tortfeasors jointly and severally. Each tortfeasor becomes liable to pay for the loss of damage occasioned to the claimants and in that case he may recover it from the defaulting tortfeasor by claiming rateable distribution.

14. Adverting to the aspect of quantum of compensation awarded by the learned Tribunal, which forms the subject matter of challenge in MAC. APP. No.405/2008, it is the contention of Mr. Navneet Goyal on behalf of the claimants that the learned Tribunal though correctly assessed the income of the deceased in consonance with his income-tax returns and after taking into account his future prospects to be in the sum of ` 5,702/- per month, but it erred in deducting 1/3rd thereof towards his personal expenses. The deceased had six legal representatives and thus not more than 1/4th of the income of the deceased ought to have been deducted towards his personal expenses.

15. The only other contention of Mr. Goyal is that the learned Tribunal erred in applying the multiplier of 14. The accident took place on 20th August, 1997 when the deceased was 35 years of age as per his Senior Secondary School Certificate and the deceased died on 24th September, 1997, and thus the multiplier of 16 ought to have been applied by the learned Tribunal to augment the multiplicand for arriving at the total loss of dependency of the appellants/claimants. As per the Second Schedule to the Motor Vehicles Act, 1988, for the purpose of assessing the loss of dependency of the legal heirs of the deceased, the appropriate multiplier would have been the multiplier of 17, but the multiplier of 16 was in consonance with the judgment of the Hon'ble Supreme Court in *Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121.

16. I find substance in both the aforesaid contentions of the learned counsel for the appellants. Calculated in the aforesaid manner, the loss of dependency per

month comes to ` 4,277/-, that is, after deducting 1/4th towards the personal expenses of the deceased from the income of the deceased assessed to be in the sum of ` 5,702/- per month. Applying the multiplier of 16, the total loss of dependency works out to ` 4,277/- x 12 x 16, i.e., ` 8,21,184/- in all. On the basis of the hospital bills raised by Batra Hospital, a sum of ` 3 lakhs has been awarded by the learned Tribunal towards loss of estate due to expenses incurred on the medical treatment of the deceased. Apart from this, the Tribunal has awarded ` 5,000/- towards funeral charges, ` 20,000/- for loss of love and affection and ` 20,000/- for loss of consortium. Adding the aforesaid amounts to the sum of ` 8,21,184/-, the appellants become entitled to the award of ` 11,66,184/-, inclusive of the interim award, if any.

17. In the result, the award amount is enhanced by a sum of ` 1,82,184/-with interest at the rate of 9% per annum as awarded by the learned Tribunal from the date of the filing of the petition till the date of realisation. The apportionment of liability fixed by the learned Tribunal is upheld with the clarification that the said liability is joint and several and the claimants shall be entitled to recover the same from any of the tortfeasors in accordance with law.

18. MAC. APP. 405/2008 and MAC. APP. 169/2009 and CM Nos.4463/2009 and 12242/2009 stand disposed of accordingly.

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