

Ram Rati and Others Vs. Devender Singh and Others

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Court : Delhi

Decided On : Apr-30-2012

Judge : J.R. Midha

Appeal No. : MAC.APP. 315-19 of 2005

Appellant : Ram Rati and Others

Respondent : Devender Singh and Others

Judgement :

ORAL:

1. The appellants have challenged the impugned award of the Claims Tribunal whereby their claim petition has been dismissed.

2. The accident dated 20th November, 2000 resulted in the death of Bhiku Ram Gupta. The deceased aged 47 years at the time of the accident, was survived by his widow, three children and parents who filed the claim petition before the Claims Tribunal. The deceased was hit by a mail van no.DL-1L-0918. The deceased was going on foot from his residence on main Kanhaiya Nagar Road towards Prem Bari Pull Road to Lawrence Road to meet his brother. At Kanhaiya Nagar Chowk, large number of people had gathered to protest against the sealing of factories by the Government. The driver of the mail motor van rashly and negligently reversed the van resulting in death of Bhiku Ram Gupta. The accident was admitted by the Mail Motor Service and the Ministry of Communication. The

defence taken was that the deceased died due to his own negligence and fault. It was stated in the written statement that Rawat Ram, mail van driver telephonically intimated the department that mail van No.57 has met with an accident with an agitator at Lawrence Road and the driver/mail peon has fled away from the spot.

3. The claimants examined the eye-witness, Rajesh Kumar who appeared as PW-3. PW-3 deposed that the driver of the mail van reversed the offending vehicle at a very fast speed on seeing the agitating crowd and in the process hit the deceased. He further deposed that the vehicle was being driven in a zig-zag manner and that the accident occurred due to the rash and negligent driving by the driver of the mail van.

4. The Claims Tribunal held that the deceased died on account of his own negligence as he was part of that agitation. The Claims Tribunal disregarded the testimony of PW-3 on the ground that he was not examined by the police.

5. This Court is not satisfied with the approach of the Claims Tribunal. It has been time and again held by this Court that the Claims Tribunal has to conduct an inquiry which is different from a trial and it is the duty of the Claims Tribunal to ascertain the truth to do complete justice. If the Claims Tribunal had any doubt as to why PW-3 was not examined by the police, the Claims Tribunal could have called the Investigating Officer of the police to find out why PW-3 was not examined. In **Mayur Arora v. Amit, (2011) 1 TAC 878**, this Court has held that the Claims Tribunal has to conduct an inquiry to find out the truth. The findings of this Court are reproduced hereunder:-

“10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by

Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.”

6. In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (Dead) through LRs., 2012 (3) SCALE 550**, the Supreme Court held that truth should be a guiding star in entire legal process. The observations of the Supreme Court are reproduced hereunder:-

“Truth as guiding star in judicial process

31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process.

32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In **Mohanlal Shamji Soni v. Union of India**, 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the

parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In ***Ritesh Tewari v. State of U.P.***, (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

“Every trial is voyage of discovery in which truth is the quest”

37. This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of ***Jones v. National Coal Board***, (1957) 2 QB 55 has observed that:

“In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries.”

39. Certainly, the above, is not true of the Indian Judicial system. A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed in the said case of **Jones** (supra) that "It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth...."

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimized.

42. In civil cases, adherence to Section 30 Code of Civil Procedure would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 Code of Civil Procedure reads as under:

30. Power to order discovery and the like. - Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit

43. "**Satyameva Jayate**" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides.

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

2.2... “In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court....”

2.15 “The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth....”

2.16.9. “Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence

of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.”

45. In ***Chandra Shashi v. Anil Kumar Verma***, (1995) 1 SCC 421, to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In ***James v. Giles et al. v. State of Maryland***, (386 U.S. 66, 87, S. Ct. 793), the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the Defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in ***United States v. J. Lee Havens***, 446 U.S. 620, 100 St.Ct. 1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:

“There has been a certain lack of candour,” “in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations.”

“I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do.”

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

“For issues in which stability is actually more important than the substance of the solution - and there are many such case - I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: “Truth or stability - truth is preferable”.

“On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth.”

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.”

7. In the facts and circumstances of this case, the judgment of the Claims Tribunal is set aside and the case is remanded back to the Claims Tribunal for conducting a fresh inquiry.

8. The parties are directed to appear before the Claims Tribunal on 4th June, 2012.

9. LCR be returned back forthwith.

10. Copy of this order be sent to the respondents. Copy of this order be also sent to the SHO, P.S. Keshav Puram who shall file the Accident Information Report under Section 158 (6) of the Motor Vehicles Act before the Claims Tribunal on the date fixed.

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