

MEHKARWATI & ANR. Appellants
Through : Mr. Mukesh Gupta and
Mr. R.P. Singh, Advs.

versus

OM PARKASH & ORS. Respondents
Through : Mr. Yashpal Rangi and
Mr. Manjit Singh, Advs.
for R – 2 & 3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

JUDGMENT (Oral)

- The appellants have challenged the award of the learned Tribunal whereby their claim petition was dismissed.
- The accident dated 5th May, 1995 resulted in the death of Shiv Kumar aged 25 years. The deceased was survived by his mother and minor brother who filed the claim petition before the learned Tribunal.
- The mother of the deceased appeared in the witness box as PW-1 and deposed that her son was unmarried. PW-1 further deposed that her husband had already predeceased

her. She proved the charge sheet, site plan, death report, post mortem report and mechanical inspection report prepared by the police as Ex.PA to Ex.PE. PW1 also proved the certificate issued by the Pradhan as Ex-PF.

4. The accident was witnessed by Mr. Anil Kumar who appeared as PW – 2 and deposed that he was driving scooter No.DDJ 1933 and the deceased was sitting on the pillion and he was taking the deceased from Ambedkar Vihar to All India Institute of Medical Sciences. PW – 2 further deposed that when he reached Bela Road after crossing Old Yamuna Bridge near Mazar, bus bearing No.HR 26 A – 1271 of Haryana Roadways came from rear side and hit the scooter due to which the PW – 2 fell on the road side and the deceased fell on the left side in front of the bus and was crushed under the front wheel of the bus. The bus stopped and the driver was apprehended with the help of the police. PW – 2 identified the driver of the bus present in Court. The statement of PW – 2 was recorded by the police and the case was registered.

5. The driver of the bus appeared in the witness box as RW-2 and deposed that his bus was not involved in the accident. The conductor of the bus also appeared in the witness box as RW – 1 and he also denied the involvement of the bus in the accident in question.

6. The learned Tribunal dismissed the claim petition holding that the appellants have failed to prove that the

accident was caused by the rash and negligent driving of the bus bearing No.HR 26 A – 1271. The learned Tribunal believed the driver and conductor of the bus. The learned Tribunal disbelieved the eye-witness, PW – 2, on the ground that he was a police man and he did not disclose his identity in the FIR. The learned Tribunal further held that the Investigating Officer of the police has not been summoned.

7. The learned counsel for the appellant submits that the identity of eye-witness PW – 2 is recorded in the charge sheet - Ex.PA and the view taken by the learned Tribunal is perverse and based on conjecture and surmises. Under Section 168 and Section 169 of the Motor Vehicles Act, the learned Tribunal is duty bound to conduct an inquiry. If the learned Tribunal had any doubt about the veracity of PW – 2, the learned Tribunal could have summoned the Investigating Officer of the police. However, the learned Tribunal did not conduct any inquiry into the matter as envisaged by Section 168 and 169 of the Motor Vehicles Act read with Rule 118 of the Central Motor Vehicles Rules.

8. The impugned bus was owned by Haryana Roadways and the Roadways also conduct an internal inquiry after the accident and, therefore, the Haryana Roadways was directed to produce the file relating to the inquiry conducted by them to find out whether the accident in question was proved in the inquiry. The learned counsel for respondent submits that the file relating to the inquiry conducted against the driver is

not traceable. However, the learned counsel for the respondent produced the accident register for the period from May, 1988 to March, 1997 in which it has been recorded on page 179 that there has been an accident between the offending bus and scooter resulting in the death of the a pillion rider in respect of which FIR No.381/1995 under Section 279/304A, PS Kotwali/Darya Ganj has been registered. The learned counsel for the respondent has also produced the personal file of the driver of the offending vehicle. In the Annual Confidential Report of the driver, it has been noted that the driver has caused one fatal accident and, therefore, he has been downgraded in the relevant year.

9. From the evidence on record and the perusal of these files, the involvement of the offending bus in question resulting in the death of deceased is clearly established and it is held that the accident occurred due to the rash and negligent driving of the bus No.HR 26A-1271 driven by respondent No.1.

10. The learned Tribunal has utterly failed to discharge the duty casted by Sections 168 and 169 of the Motor Vehicles Act. Reference in this regard be taken from the judgment of this Court in the case of **Somari Devi vs. Ragwar Singh**, FAO No. 884/2003 decided on 22nd May, 2009 where this Court held as under:-

“Section 168 provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunal shall follow such summary procedure as it thinks fit subject to the Rules made in that behalf. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rule 118 of Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the claims Tribunal. Rule 118(7) provides that the claims Tribunal may during the course of enquiry visit the site of accident or examine any person likely to be able to give information relevant to the proceedings.

10. The scheme of the Motor Vehicles Act and the Rules is that the Tribunal has to conduct an inquiry into the claim and a summary procedure has to be evolved. The Act as well as Rules nowhere use the word “trial”.

11. In the case of **Saramma Scaria Vs. Mathai, 2003 ACJ 213**, the Kerala High Court observed as under:

“4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs' of the deceased. Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In N.K. V. Brothers (P) Ltd. v. M. Karumai Ammal, AIR 1980 SC 1354 Supreme Court has reminded the

Claim Tribunals stating as follows:

"Road accidents are one of the top killers in our country, specially, when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here and some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes."

12. In Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala, 1999 ACJ 1129, the division bench of Gujarat High Court observed as under:

"The thrust of the attack on judicial values is not so much that judges are consciously prejudiced, but that they are subconsciously influenced by the fact that they come from a narrow social stratum and reflect the values of a minority class. There can be no question but that subconscious influences of this kind do exist, but the submission made here is that the charge is prone to exaggeration.

In the first place, if subconscious influences are taken into account, as indeed they should be, then account should be taken of all such influences, including those that

tend to counteract and minimize prejudice. One of these is fidelity to rules, principles and doctrines. Even if a judge were to have some prejudice and wants to give effect to it, he has to do so as plausibly as possible within the framework of rules, the leeways of doing so are not unlimited and this does operate as a brake on personal prejudice. It has to be remembered that cases are argued, often with great ingenuity, by counsel, and if one side puts forward an interpretation of a statutory provision or a precedent, which cannot be countered plausibly, the judge has to decide accordingly, however much his own wishes are to the contrary”.

10. For all the aforesaid reasons, the appeal is allowed. The impugned award is set aside and the case is remanded back to the learned Tribunal to pass an award on the quantum of compensation. The learned Tribunal shall grant an opportunity to both the parties to lead evidence for computation of compensation and shall pass an appropriate award in accordance with law.

11. Considering that this case relates to accident pertaining to the year 1995, the learned Tribunal is directed to expeditiously give priority to this case.

12. The parties shall appear before the learned Tribunal on 10th August, 2009.

JULY 13, 2009
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J.R. MIDHA, J