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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 575/2002**

Date of decision: 06th January, 2009

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PADAM MOHAN & ANR. Appellant
Through : Mr. M.L. Mahajan with
Mr. Gaurav Mahajan, Advs.

versus

ANAND SINGH & ORS. Respondent
Through : None.

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

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

J.R. Midha, J. (Oral)

1. The appellant is the brother of deceased, Surinder Mohan who suffered injuries in a road accident and died on 12th June, 1995. The appellant filed a petition for compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal against the driver, owner and insurance company of bus bearing No.DL-IP-2184 claiming compensation of Rs.5,00,000/-.
2. The learned Trial Court dismissed the petition of the appellant on the ground that the appellant failed to prove that his brother Surinder Mohan died as a result of the injuries sustained by him in the road accident on 13th May, 1995.

3. The case set up by the appellant before the learned Tribunal was that the deceased was hit by the offending bus on 13th May, 1995 and was initially taken to Hindu Rao Hospital and was later removed to Ram Manohar Lohia Hospital on 14th May, 1995 in unconscious state and he remained unconscious till he died on 12th June, 1996. Para 23(iii) of the petition before the learned Tribunal is reproduced below:-

“iii) That Sh. Surinder Mohan was removed to Ram Manohar Lohia Hospital in the night of 14.5.1995 in un-conscious state as the case being serious the Doctors of Hindu Rao Hospital then removed the patient to Ram Manohar Lohia Hospital for better treatment and accordingly Sh. Surinder Mohan was admitted in Ram Manohar Lohia Hospital where he remained unconscious and died on 12.6.1996 at about 12.35 am.”

4. The respondents contested the petition before the learned Tribunal. The driver and owner of the offending vehicle denied the accident by the offending vehicle.

5. At the trial, the appellant examined only one witness, namely, himself as PW1. The appellant deposed that the deceased was hit by the offending bus on 13th May, 1995 and became unconscious and was taken to Hindu Rao Hospital who referred the deceased to Ram Manohar Lohia Hospital. He further deposed that the deceased remained unconscious till his death on 12th June, 1995 in Ram Manohar Lohia Hospital.

6. In cross-examination, the appellant stated that the deceased remained in Ram Manohar Lohia Hospital for 7-8 days and was discharged and was again admitted on 10th June, 1995.

The appellant deposed that he spent Rs.40,000/- on the illness of his brother but no document was produced to prove the same.

7. The appellant proved the documents Ex.PW1/1 to Ex.PW1/18. The relevant documents for the present context are FIR - Ex.PW1/3, MLC - Ex.PW1/13, letter-Ex.PW1/15, death summary and post mortem report - Ex.PW1/18.

8. The MLC - Ex.PW1/13 does not show any head injury or that the petitioner was unconscious. It merely records that the deceased was unfit for statement.

9. The police registered FIR - Ex.PW1/3 under Sections 279/337 IPC which resulted in a Challan dated 7th September, 1995 - Ex.PW1/2 under Sections 279/337 IPC. The Challan-Ex.PW1/2 also shows that a case under Section 279/337 was made out and the Challan was filed much after the death on 7th September, 1995. If the death would have been the cause of accident dated 13th May, 1995, the police would have converted the case to Section 304-A, IPC.

10. The death summary and the post mortem report-Ex.PW1/18 records that the deceased fell from chair two days ago and lost consciousness since 10th June, 1995. The cause of death in the death report form has been mentioned as cardio-respiratory arrest following head injury and the duration of illness has been mentioned as two days. It further records that the deceased had suffered a road accident one month

back for which he was admitted but CT did not show any operable lesion.

11. The counsel for the petitioner has strongly urged that the deceased Surinder Mohan died due to the head injury suffered in the road accident on 13th May, 1995 and the testimony of PW1 and the documents Ex.PW1/2, Ex.PW1/3, Ex.PW1/13 and Ex.PW1/18 sufficiently prove that the deceased died due to the injuries suffered in the road accident on 13th May, 1995.

12. The appellant has referred to and relied upon the judgment of Hon'ble Supreme Court in the case of *Suresh Yallappa Patil vs. General Manager, K.S.R.T.C.* reported as Vol. VI (2002) SLT 217. However, the said judgment is not applicable to the present case.

13. No other ground has been urged.

14. I do not find any substance in the arguments of the learned counsel for the appellant. The MLC - Ex.PW1/13 does not show any head injury suffered by the deceased on 13th May, 1995. The deceased was thereafter referred to Ram Manohar Lohia Hospital from where he was discharged on 19th May, 1995 which is recorded in letter-Ex.PW1/15. There is an endorsement on Ex.PW1/15 by Dr. Puneet of Ram Manohar Lohia Hospital stating that "*As per hospital records nature of injury – simple*".

15. The appellant has not produced the discharge summary dated 19th May, 1995 of Ram Manohar Lohia Hospital. There is

also no evidence to show that the deceased was unconscious from 13th May, 1995 to 19th May, 1995 and was discharged in an unconscious state on 19th May, 1995. Ex.PW1/15 records the statement of the doctor that the nature of injuries were simple. In any view of the matter, it is highly improbable to believe in the course of natural events and human conduct that the hospital would discharge an unconscious patient to be taken back home. Even assuming for the sake of arguments that the appellant took back the deceased in an unconscious state back home, it does not appeal to reason that an unconscious person would sit on a chair. Admittedly, the deceased fell from the chair on 10th June, 1995. Ex.PW1/18 clearly shows that the deceased fell from the chair on 10th June, 1995 and lost consciousness. The death report form clearly records that the duration of illness had been two days.

16. The appellant has also not produced any evidence with regard to the treatment given to the deceased in Ram Manohar Lohia Hospital from 13th May, 1995 to 19th May, 1995. No document to prove the expenditure on the treatment has been produced. The appellant has not produced/examined the doctor who treated the appellant. In my opinion, the doctor who treated the deceased was the most important witness.

17. From the evidence on record, it is clear that the deceased Surinder Mohan fell from his chair on 10th June, 1995 and became unconscious whereupon he was admitted in Ram

Manohar Lohia Hospital where he underwent treatment and finally died due to cardio-respiratory arrest on 12th June, 1995. The appellant has not been able to prove that the death of the deceased occurred due to the accident dated 13th May, 1995. The accident dated 13th May, 1995 resulted in simple injuries (no head injury) for which the deceased took treatment for few days. The documents filed by the appellant before the learned Tribunal belie his claim.

18. The appellant is guilty of concealment of the fact that the deceased fell from chair on 10th June, 1995 and lost consciousness and underwent treatment for two days. In the petition as well as the evidence, the appellant set up a false case that the appellant became unconscious on 13th May, 1995 and he remained unconscious till death on 12th June, 1995. I also draw adverse inference against the appellant for not producing the discharge summary dated 19th May, 1995 of Ram Manohar Lohia Hospital, the treatment record from 13th May, 1995 up to 10th June, 1995 and the record of the expenditure on treatment for the said period and not producing any doctor who treated the deceased. The adverse inference is that all the aforesaid documents would have contradicted the appellant's case and, therefore, were not filed.

19. I agree with the findings of the learned trial court that the petitioner has failed to prove that Surinder Mohan died as a result of injuries sustained by him on 13th May, 1995.

20. I do not find any merit in this appeal. The appeal is dismissed with costs. The appellant is guilty of filing a frivolous claim and also making false statements on oath to link the death arising out of fall from chair on 10th June, 1995 to a past motor accident which resulted in minor injuries. It shows the extent to which greed can make a person fall. I am, therefore, constrained to impose cost of Rs.25,000/- on the appellant to be deposited with the Delhi High Court Legal Services Committee.

J.R. MIDHA, J.

JANUARY 06, 2009

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