

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

+ MAC.APP.No.29/2005 and CM No.768/2005

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Reserve on : 1st May, 2012
Date of decision : 4th May, 2012

SATRAM DASS & ANR. Appellants
Through : Mr. S.K. Chachra and
Ms. Gaganpreet Chawla, Advs.
versus

CHARANJIT SINGH & ORS. Respondents
Through : Ms. Shantha Devi Raman,
Adv. for R-3.

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

JUDGMENT

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

2. On 17th November, 1997 at about 05:30 A.M., the deceased, Prem Kumar is alleged to have left his house for bringing milk on his two wheeler scooter bearing No.DL-8SG-0145. When the deceased reached JP Market T-junction at Pitampura, he has alleged to have been hit by bus No.DEP-5399. A PCR van reached the spot and took the deceased to Hindu Rao Hospital but he succumbed to the injuries on the way and was declared dead by the doctor on duty in the hospital. The deceased was survived by his parents who filed the claim petition against the driver, owner and insurance

company of the bus bearing No.DEP-5933.

3. The father of the deceased appeared in the witness box as PW-1 and deposed that the deceased was aged 20 years at the time of the accident. He proved the Senior Secondary certificate of the deceased as Ex.PW1/1. He further deposed that the deceased was having his own shop of general merchandise from which he was earning ₹4,000/- per month. He tendered the certified copies of the chargesheet, notice under Section 133 of the Motor Vehicles Act, mechanical inspection report, site plan, letter written by the Investigating Officer to the transport authority, MLC, postmortem report and FIR which were marked as Ex.PW1/4 to Ex.PW1/11.

4. Mr. Rohit Sharma, eye-witness of the accident appeared in the witness box as PW-2 and deposed that he witnessed the accident on 17th November, 1997 at about 05:30 A.M. He deposed that bus bearing No.DEP-5933 hit the deceased who was riding his own scooter at JP Market T-Junction due to which the deceased was thrown off the scooter and suffered injuries all over his body. He further deposed that the bus was driven at a very high speed and the bus driver was negligent and the scooterist became unconscious due to the accident. A PCR van reached at the spot and took the scooterist to Hindu Rao Hospital. The scooterist died on the way. He further deposed

that his statement was recorded by the police and he could identify the driver.

5. The Claims Tribunal held that the involvement of bus bearing No.DEP-5933 has not been proved by the appellant. The Claims Tribunal relied on a letter written by the Investigating Officer to the transport authority in which he has mentioned two numbers, namely, DBP-5955 and DEP-5933. The Claims Tribunal inferred from this document that the Investigating Officer was not sure about the vehicle number and, therefore, the Claims Tribunal held that bus bearing No.DEP-5933 was not involved in the accident.

6. The learned counsel for the appellants has urged at the time of hearing of this appeal that the findings of the Claims Tribunal are perverse and contrary to the evidence on record. It is further submitted that the Claims Tribunal has not conducted any inquiry as envisaged under Section 168 of the Motor Vehicles Act. It is further submitted that the Claims Tribunal has completely overlooked the principles of preponderance of probabilities and it appears that the Claims Tribunal has applied the principle of proof beyond reasonable doubt applicable to criminal cases. The learned counsel refers to and relies upon the following judgments:-

(i) Bimla Devi v. Himachal Road Transport Corporation, 2009

ACJ 1725.

(ii) Bhupathi Prameela v. Superintendent of Police, Vizianagaram, 2011 ACJ 861.

7. The learned counsel for the appellants has further submitted that the deceased was aged 20 years at the time of the accident and was running a shop of general merchandise in the name of Prem General Store earning ₹4,000/- per month and was survived by his parents aged 50 and 55 years respectively. The minimum wages for a matriculate at the relevant time was ₹2,232/- per month. It is further submitted that the compensation be awarded to the appellants taking the income of the deceased to be ₹4,000/- per month, deducting 50% towards personal expenses and applying the multiplier of 13 according to the age of the mother.

8. The learned counsel for respondent No.3 supports the finding of the Claims Tribunal that the offending vehicle No.DEP-5933 was not involved in the accident. It is further submitted that the involvement of offending vehicle has not been sufficiently proved by the appellants. It is further submitted that the Investigating Officer has himself issued notice to the Transport Authority to give the particulars with respect to vehicle Nos.DBP-5955 and DEP-5933.

9. 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. It is the duty of the Claims Tribunal to ascertain the truth to do complete justice. 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.”

10. Vide order dated 14th January, 2010, this Court directed the SHO, P.S. Shalimar Bagh to conduct an inquiry and submit a report to this Court as to whether the deceased, Prem Kumar was hit by bus bearing No.DEP-5933 in the road accident dated 17th November, 1997. The relevant portion of the order dated 14th January, 2010 is reproduced hereunder:-

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

2. The accident dated 17th November, 1997 resulted in the death of Prem Kumar. The deceased was survived by his parents who filed the claim petition before the learned Tribunal.

3. The deceased was aged 20 years at the time of the accident and had gone to take milk from the milk booth at JP Market, T-Junction, Pitampura when he was hit by Bus No.DEP-5933 driven in rash and negligent manner.

4. The learned Tribunal dismissed the claim petition on the ground that it was doubtful whether the deceased has been killed by bus No.DEP-5933 or DBP-5955 or DBP-5933.

5. Section 168 of the Motor Vehicles Act provides that the Tribunal shall conduct an inquiry into the claim petition. Section 169 of the Motor Vehicles Act provides that the Tribunal shall follow such summary procedure as it deems fit to conduct such an inquiry. The inquiry stipulated in Section 168 of the Motor Vehicles Act is different from the civil trial. If the Tribunal had any doubt about the involvement of the bus No.DEP-5933, the Tribunal should have examined the Investigating Officer to ascertain the truth. However, no such attempt has been made by the Claims Tribunal.

6. Be that as it may, this Court in appellate jurisdiction would like to conduct an inquiry and for that purpose, the SHO, PS Shalimar Bagh, Delhi, is directed to conduct an inquiry and report to this Court as to whether the deceased Prem Kumar was hit by bus No.DEP-5933 in the road accident dated 17th November, 1997. The report be submitted before this Court within a period of four weeks."

11. In compliance of the order dated 14th January, 2010, SHO, P.S. Shalimar Bagh conducted an inquiry and submitted the report that the deceased was hit by bus No.DEP-5933 in the accident dated 17th November, 1997. The relevant portion of the report is reproduced hereunder:-

"Briefly stated that on 17-11-97 at 5.25 AM a PCR call regarding accident was received DD No-39 in PP Pitampura and the said DD was marked to SI Ram Kumar along with Claims Tribunal. Kishan Lal No-1444/NW reached at the spot JP market where scooter No-DL-8SG-0145 was found in accidental position and it was came to notice that some unknown vehicle hit the said scooter and fled away from the spot. SI Ram Kumar asked Ct. Kishan Lal at the spot to preserve the place of occurrence and reached Hindu Rao Hospital where on MLC no-16887/97 Prem Kumar S/O-Satram Ram Das R/O-MP-190A, Pitam Pura Delhi was found brought dead. No eye witness was found either in the Hindu Rao Hospital or on the spot and the FIR No-756/97, Dt-17.11.97, U/S-279/304A IPC was registered in P.S. Shalimar Bagh, Delhi on DD Entry.

During investigation on 17.11.1997 IO SI Ram Kumar had given request to Transport authority to provide address of owner of vehicle No-DBP-5933 and DBP-5955 and transport authority had given remarks that records of both above said vehicles is not available. It cannot be said on which ground the IO of the case SI Ram

Singh sent a request to Transport Authority for details of above mentioned two vehicle as the police file of the case is traceable. The search for police file of the case has been done and in the concerned court, prosecution branch, record room of the police station and DCP office but the said case file could not be traced out.

On 21-11-97, IO SI Ram Kumar recorded the statement of eye witness Sh. Prem Pal S/O-Sh. Sobran Singh R/O-NP-14B, Pitam Pura Delhi. Sh. Prem Pal stated that he is TSR driver and on 17-11-97, he was present in JP Market then one bus white colour bearing No-DEP-5933 being driven in a rash and negligent manner recklessly came from double tanki side and hit the scooter and fled away from the spot. Sh. Prem Pal went behind the bus on his TSR towards britania chowk and noted down the number of the offending bus.

On 25-11-97 other eye witness Sh. Rohit Sharma stated that on 17-11-97 he was going for purchasing milk then one bus white colour bearing No-DEP-5933 being driven in a rash and negligent manner recklessly came from double tanki side and hit the scooter and fled away from the spot. One TSR driver went behind the bus. A PCR van also came at the spot and took away the injured Prem Kumar to the hospital. After that he went to Rajasthan for an emergency work and after coming to Delhi on 25.11.97 he went to Police Chowki and got his statement recorded identifying the driver of the offending vehicle Charanjeet Singh. The IO SI Ram Kumar gave notice U/S-133 M.V.Act to Sh. Hansraj, the owner of the offending vehicle.

The bus driver Charanjeet Singh S/O-Gajjan Singh R/O-H.No-491, Sardar Colony, Sector-16, Pocket-J, Rohini, Delhi was arrested in the said case on the identification of eye witness Rohit Sharma and the offending bus number DEP-5933 was also taken into police possession and the bus was got mechanically inspected. After completion of investigation of the case the charge-sheet against the accused Charanjeet Singh was filed in

the court for judicial verdict. During the trial of the case both the eye-witness Sh. Prem Pal and Sh. Rohit Sharma could not be examined as both the witnesses were reportedly not traceable.”

12. From the testimony of the eye-witness, PW-2, the documents – Ex.PW1/4 to Ex.PW1/11 and the status report of the SHO, P.S. Shalimar Bagh, this Court is satisfied that the deceased Prem Kumar died in the road accident dated 17th November, 1997 by the rash and negligent driving of the bus bearing No.DEP-5933. The reasons for arriving at the above finding are as under:-

(i) On 17th November, 1997 at about 5:25 a.m., the PCR call was received whereupon DD No.39 was registered at P.S. Shalimar Bagh which was marked to S.I. Ram Kumar who along with Constable Kishan Lal reached the spot and found the scooter No.DL-8SG-0145 in accidental position.

(ii) The police recorded the statement of two witnesses namely, Prem Pal Singh and Rohit Sharma who deposed that the deceased was hit by bus bearing No.DEP-5933 whereupon the Investigating Officer issued notice under Section 133 of the Motor Vehicles Act to Hans Raj, owner of the offending vehicle.

(iii) Notice under Section 133 of the Motor Vehicles Act was proved as Ex.PW1/5. The reply of the owner, Hans Raj is also recorded in Ex.PW1/5 in which he disclosed that the offending vehicle was driven by Charanjit Singh and he produced the

offending vehicle as well as driver before the police.

(iv) The offending vehicle was sent for mechanical inspection by the police. The mechanical inspection report is proved as Ex.PW1/6.

(v) The Investigating Officer may be in doubt at the initial stage but after recording the evidence of the two witnesses, there was no doubt about the bus bearing No.DEP-5933 being involved in the accident and, therefore, the police filed the chargesheet after satisfying that the accident was caused by the driver of bus No.DEP-5933.

(vi) If the Claims Tribunal had any doubt about the involvement of bus bearing No.DEP-5933, the Claims Tribunal ought to have examined the Investigating Officer and the other eye-witness, namely, Prem Pal Singh under Section 165 of the Indian Evidence Act instead of drawing adverse inference.

13. The deceased was aged 20 years at the time of the accident. The deceased was running a shop of general merchandise in the name of Prem General Store. The income of the deceased is taken to be ₹3,000/- per month, 50% is deducted towards his personal expenses and the multiplier of 13 is applied according to the age of the mother to compute the loss of dependency at ₹2,34,000/- [(₹3,000 – 50% of ₹3,000) x 12 x13]. ₹10,000 is awarded towards loss of love

and affection, ₹10,000/- towards loss of estate and ₹6,000/- towards funeral expenses. The total compensation is computed to be ₹2,60,000/- along with interest @9% per annum from the date of filing of the claim petition till realization.

14. The appeal is allowed and ₹2,60,000/- along with interest @9% per annum from the date of filing of the claim petition till realization is awarded to the claimants against the respondents. Respondent No.3 is directed to deposit the entire award amount along with up to date interest with UCO Bank, Delhi High Court Branch by means of cheque drawn in the name of UCO Bank A/c Satram Dass within 30 days.

15. Upon the aforesaid amount being deposited, UCO Bank is directed to release 10% of the said amount to the appellants by transferring the same to their Saving Bank Account. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% of the amount to the appellants by transferring the same to their Saving Bank Account. The remaining amount be kept in fixed deposit in the name of the appellants in the following manner:-

- (i) Fixed deposit in respect of 10% for a period of one year.
- (ii) Fixed deposit in respect of 10% for a period of two years.

- (iii) Fixed deposit in respect of 10% for a period of three years.
- (iv) Fixed deposit in respect of 10% for a period of four years.
- (v) Fixed deposit in respect of 10% for a period of five years.
- (vi) Fixed deposit in respect of 10% for a period of six years.
- (vii) Fixed deposit in respect of 10% for a period of seven years.
- (viii) Fixed deposit in respect of 10% for a period of eight years.
- (ix) Fixed deposit in respect of 10% for a period of nine years.

16. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiaries.

17. Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiaries to facilitate identity.

18. No cheque book be issued to the beneficiaries without the permission of this Court.

19. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiaries.

20. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

21. Half yearly statement of account be filed by the Bank in this Court.

22. On the request of the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.

23. The beneficiaries shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).

24. The pending application is disposed of.

25. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345).

MAY 04, 2012

J.R. MIDHA, J