

RESERVED

A.F.R.

Court No. - 33

Case :- FIRST APPEAL FROM ORDER No. - 3125 of 2003

Appellant :- Km. Jyoti Tripathi and others

Respondent :- Devendra Singh Yadav and others

Counsel for Appellant :- Satya Dheer Singh Jadaun

Counsel for Respondent :- S.K. Pandey, B.C. Naik, Brijesh Chandra Naik, Nagendra Kumar Srivastava, S.N.S. Yadav

Hon'ble J.J. Munir,J.

This is a claimants' appeal, arising out of the judgment and award passed by Mr. Naresh Singh, the then Motor Accident Claims Tribunal/Special Judge (Dacoity Affected Areas) Etawah dated 31.07.2003, rejecting the claim petition.

2. The seven appellants here are the legal representatives of the late Dinesh Kumar Tripathi, who died in a motor accident. A detailed reference to each of the seven appellants before this Court shall be made a little later in this judgment, disclosing their relationship to the deceased and other matters.

3. The facts giving rise to Motor Accident Claims Petition No. 127 of 1997 are that on the 29th of May, 1996, at about half past nine in the evening hours, Dinesh Kumar Tripathi was riding Maruti Car bearing registration No. UP 78L/9280, belonging to a friend of his. The car was proceeding from Kanpur to Agra. As the car reached Village Kanaita within the local limits of Police Station Matsena, District Firozabad, a truck bearing registration No. UP 83/9831 approached from the opposite direction and hit the Maruti Car head-on. As a result of the impact, Dinesh Kumar Tripathi died, whereas all other occupants in the car were badly injured.

4. A First Information Report was lodged with the Police, giving rise to Crime No. 88 of 1996, Police Station Matsena, District Firozabad. Later on, Section 304A of the Indian Penal Code, 1860 was added. According to the claimants, the First Information Report was lodged against the driver of truck bearing registration No. UP 83/9831. It is the further case of the claimant-appellants that at the time of the accident, the driver of the Maruti Car was proceeding from Kanpur to Agra at a controlled speed, whereas the offending truck approached from the Agra end of the road at a high speed, driven negligently. The driver of the offending truck did not bear in mind the other vehicles moving on the road and hit the ill-fated car, moving to the wrong side of the road. The injured in the accident were rushed to the District Hospital, Firozabad by members of the public who had gathered at the site of accident. The driver of the offending truck, abandoned his vehicle at the site of the accident and fled away.

5. The claimant-appellants say that at the time of the accident, Dinesh Kumar Tripathi was a healthy man. He was gainfully employed at Kanpur in the business of property dealing and transport. He provided for all members of the family out of the profits of his business and all of them were dependent upon him. His death in the accident has destituted the family, leaving them no means of sustenance. Dinesh Kumar Tripathi's wife had predeceased him, leaving behind three minor children. With the passing away of Tripathi, the minors have been utterly orphaned. They were provided for by the deceased, who would look after them. There is, according to the claimants, no means of sustenance for the minors in future. The claimant-appellants also say that Tripathi's brothers, his father and mother were all dependent upon him. The deceased would provide for all the claimant-appellants. His demise has plunged the family into a financial crisis. Their future has turned bleak. Tripathi's death has caused

the claimants to suffer physically, mentally and economically, a loss that is irreparable.

6. It is averred in the claim petition that the drivers of both the vehicles were not individually vigilant. The driver of the offending truck was driving at an uncontrolled speed, whose negligence caused the unfortunate accident. The claimants demanded a total compensation of ₹20,60,000/- under Section 166 of the Motor Vehicles Act, 1988¹ and a sum of ₹4,62,833.34 under Section 163A, claiming that the sum of compensation be ordered to be paid with interest at the rate of 18% per *annum* from the date of institution of the claim until realisation.

7. Devendra Singh Yadav, opposite party No. 1 to the claim petition and respondent No. 1 to this appeal, is the owner of the offending truck. He shall hereinafter be called 'the owner'. The New India Assurance Company Limited, Station Road, Etawah through the Branch Manager are the insurers of the offending truck. They shall hereinafter be called 'the insurers'. The insurers are impleaded as opposite party No. 2 to the claim petition and respondent No. 2 to the appeal.

8. Ashok Bhatia, son of Kishan Lal Bhatia, is the owner of the ill-fated Maruti Car. He has been impleaded as opposite party No. 3 to the claim petition and respondent No. 3 to this appeal. He shall hereinafter be called 'the car owner'. The United India Insurance Company Limited, Branch Office, Devi Road, Mainpuri through its Branch Manager are the insurers of the ill-fated car. They shall hereinafter be referred to as 'the Insurance Company'.

9. The seven claimant-appellants to this appeal shall be hereinafter called 'the claimants', unless the context necessitates an individual or different reference.

1 'the Act of 1988' for short

10. A written statement was filed on behalf of the owner bearing Paper No. 25 रू. The owner generally denied allegations in the claim petition, except that he was the owner of the offending truck and that the offending vehicle was insured with the insurers. In the additional pleas, it was averred that the driver of the offending truck was operating it at a slow speed, in accordance with the traffic rules. The accident happened entirely on account of the negligence of the ill-fated car's driver, who was operating the vehicle at a high speed and negligently. The truck was plying with all valid documents, permitting it to move on the road. The truck driver was driving it at a controlled speed. It is averred that there are no particulars pleaded, giving out the deceased's income, age and business. It was also pleaded that no documentary evidence has been produced in support of the claimants' case. According to the owner, they were not liable to compensate the claimants, and, if at all, the offending vehicle be found involved and the owner liable, it is the insurers who would have to bear the burden, inasmuch the offending truck was insured under a policy bearing number 313200205244 from 07.04.1996 to 06.04.1997-98. It was a comprehensive cover.

11. A separate written statement was filed on behalf of the insurers, bearing Paper No. 14 रू. The insurers took an objection that the claim petition under Sections 163A and 166 of the Act of 1988 was not maintainable together. It is the insurers' further case that the deceased was said to be aged 28 years and his income ₹4,000/- per *mensem*. According to the insurers, these facts are incorrect and concocted in order to bolster the claim. The deceased did not do business of property dealing or transport, nor did he have a monthly income of ₹4,000/-, as alleged. It was also said that burden to prove the deceased's income lay upon the claimants. It was also pleaded that if the claimants did not succeed in establishing the deceased's age, as alleged, they would not be entitled to compensation. It was pleaded in the alternative that if the petitioner

produced evidence, oral or documentary in support of the deceased's income, the insurers reserve their right to file an additional written statement and produce evidence in rebuttal. The insurers came up with a plea that the claimants were not the legal representatives of the deceased. Therefore, they had no right to institute the present claim. The burden to prove that the claimants were, indeed, the deceased's legal representatives lay upon them. According to the insurers, on 29.05.1996, at half past nine at the Etawah-Agra Road, between Kaneta and Goda, no accident took place nor the one subject matter of the claim. It is also averred that on 29.05.1996, the deceased was not moving in his friend's Maruti Car from Kanpur to Agra, nor did the offending truck hit the car. The accident subject matter of the claim petition never happened. Therefore, the insurers have no liability in the matter. In the alternative, it is pleaded that on the date of the accident, the driver of the ill-fated car was driving it callously and negligently. The accident happened because of negligence of the ill-fated car's driver, not the offending truck's driver. The insurers would, therefore, not be liable. The insurers further on said that if in the judgment of the Tribunal, the accident happened because of the negligence of both the drivers, liability to make good compensation would not entirely be that of the insurers. Instead, the accident being caused by contributory negligence of both drivers, the insurers and the Insurance Company would both be liable.

12. It is next pleaded by the insurers that the claimants as well as the car owner would have to prove that the drivers of both vehicles held valid and legal driving licenses, and that both were not inebriated. If the aforesaid facts are not established by the claimants, the owner and the insurers would not be liable. The existence of a route permit with the offending truck was also denied and, on that basis, the insurers' liability. It was also pleaded that in paragraph No. 17 of the claim petition, the cover note number and its validity is mentioned along with the registration

number of the offending truck, but no particulars of the policy have been given. In view of these state of pleadings, the insurers deny their liability. If the owner later on file the policy, the same would be got verified, and, which, if verified, the insurers would accept their liability. The insurers also pleaded that in the event collusion was discovered between the owner and the claimants, the insurers are entitled to protection under Section 170 of the Act of 1988.

13. A plea was also raised that if the premium on the date of the accident was not found deposited by the owner, it would be regarded as a violation of Section 64VB of the Insurance Act, 1938² and the insurers not liable to indemnify. It is also the insurers' case that there has been no notice or information to the insurers about the accident, which is required by the conditions of the policy. Therefore, it is a violation of the policy, discharging the insurers of their obligation. There is also a plea to the effect that it is asserted that apart from the deceased Tripathi, there are others said to be injured. But, in the claim petition, the names of those persons have not been disclosed. It is, therefore, to be regarded that no one else sustained injuries. If any evidence regarding the injuries sustained by others is produced, it ought to be regarded as got up and based on afterthought. It is then asserted that the claim being one both under Sections 163 and 166 of the Act of 1988, is misconceived.

14. A separate written statement was filed on behalf of the car owner, Paper No. 11 ख. After a general denial of the facts asserted in paragraph Nos. 1 to 23 of the claim petition, in the additional pleas, it is asserted that the ill-fated car was plying with all valid documents. It was not being driven negligently, but, that the offending truck was driven at a high speed and callously, resulting in the accident. The compensation claimed is excessive, both on facts and law. It is pleaded in paragraph No. 29 that the driver of the ill-fated car died in the accident. The liability to pay

2 'the Act of 1938' for short

compensation lies with the owner and the insurers. The claimants are not entitled to compensation.

15. A written statement, Paper No. 24 ख was filed on behalf of the Insurance Company. Paragraph Nos. 1 to 23 of the claim petition are generally denied in a solitary paragraph, and in the additional pleas, it is averred that instituting a claim both under Sections 163A and 166 of the Act of 1988, it is against the law. The compensation claimed is exaggerated. The owner has not given any information regarding the accident to the Insurance Company.

16. A perusal of the claim petition would show that there was no negligence by the driver of the ill-fated car, and, therefore, the Insurance Company is not liable. The averments in the claim petition show that the accident happened due to the truck driver's negligence, and, therefore, if, in the Court's opinion, the claimants are entitled to compensation, the liability would lie with the owner and the insurers; not the Insurance Company. When the accident happened, the driver of the ill-fated car did not hold a valid driving license. The claimants and the owner have to establish that at the time of the accident, the driver of the ill-fated car was not inebriated, and that he knew how to drive a Maruti Car. In the event the claimants and the owner are not able to prove the aforesaid facts, the Insurance Company would not be liable to compensate. The claim petition is bad for non-joinder, inasmuch as the driver of the ill-fated car has not been pleaded as a party. The car owner and the claimants are obliged to prove that on the date and time of the accident, the ill-fated car was validly registered, and plying on a valid permit and fitness certificate. If the aforesaid facts are not established by the owner and the claimants, the Insurance Company would not be liable. The facts disclosed in the petition would show that the ill-fated car was plying for hire and carrying passengers. It had, on board, passengers in excess of the prescribed seating capacity. For all these reasons, a violation of the terms of the

policy is alleged. Tripathi's age at the time of his death was not 28 years, nor did he do any kind of business. He did not support the claimants in any manner and his death has not led to any financial difficulties for the claimants. The claimants have disclosed their ages far less than their years, and a case set up to claim excessive compensation. The claimants have demanded exaggerated sums of money under different heads towards compensation, to which they are not entitled. The ill-fated car was not insured with the Insurance Company. Therefore, if the owner of the ill-fated car and the claimants establish these facts, the Insurance Company is entitled to the protection of Section 64VB of the Act of 1938.

17. On the pleadings of parties, the following issues were framed (translated into English from Hindi) :

(i) Whether on 29.05.1996 at about 09:30 p.m. at Mughal Road, on the Etawah-Agra Highway, between Kanata and Goda, truck No. UP 83/9831 operated by its driver at a high speed and negligently, caused the accident, in consequence whereof, Dinesh Kumar Tripathi sustained injuries, to which he succumbed?

(ii) Whether on the aforesaid date, time and place on account of the driver of Maruti Car No. UP 78/L 9280, driving it at a high speed and negligently, the accident happened, leading Dinesh Kumar Tripathi to sustain injuries, resulting in his death?

(iii) Whether on the aforesaid date, time and place, the accident involving truck No. UP 83/9831 and Car No. UP 78/L9280 happened due to contributory negligence of the drivers?

(iv) Whether on the date and time of the accident truck No. UP 83/9381 was insured with opposite party No. 2, the New India Assurance Company Limited ?

(v) Whether on the date and time of the accident Maruti Car No. UP 78/L 9280 was insured with opposite party No. 4, the United Insurance Company Limited ?

(vi) Whether on the date and time of the accident the drivers of Truck No. UP 83/L9831 and Maruti Car No. UP 78/L 9280 held valid driving licenses ?

(vii) Whether the claimants are entitled to receive any compensation? If so, how much and from which opposite party?

18. On behalf of the claimants, Jyoti Tripathi was examined as P.W.1 and Akhilesh Tripathi as P.W.2. In their documentary evidence, the claimants produced, through a list bearing Paper No. 67 ¶ a certified copy of the First Information Report, a certified copy of the written report, a certified copy of the site-plan, a certified copy of the postmortem relating to the deceased, a certified copy of the *panchayatnama*, a certified copy of the charge-sheet filed in the relevant crime, and a certified copy of the technical inspection report relating to the offending truck.

19. The claimants further produced, through a list bearing Paper No. 49 ¶, a copy of the order dated 05.10.1996 passed by the Principal Judge, Family Court, Kanpur Nagar in Case No. 78/70/96 under Section 7 of the Guardian and Wards Act, 1890, appointing the claimant, Akhilesh Tripathi, brother of the deceased, guardian of the person and property of Kumari Jyoti Tripathi, Aniruddh Tripathi and Saurabh Tripathi; a photostat copy of the High School certificate and mark-sheet issued by the U.P. Board of High School and Intermediate Education relating to the deceased and showing his date of birth, a photostat copy of the death certificate relating to Sushma Tripathi, wife of the deceased, a certified copy of the death certificate relating to the claimant, Roopnarayan Tripathi, father of the deceased, showing his date of death to be 27.10.2001. A notarized copy of the partnership deed between five partners, including the owner Ashok Kumar Bhatia and the deceased, Dinesh Kumar Tripathi, apart from three other partners, constituting themselves into a partnership firm under the name and style of Messrs East-West Carrying Corporation was filed, besides a notarized copy of an agreement to sell dated 17.12.1994

executed in favour of the deceased, Dinesh Kumar Tripathi by Smt. Devrati Rai, widow of Ram Prasad Rai, covenanting to sell Plot No. 85, Block K, Scheme I, Kakadev, Kanpur Nagar, admeasuring 356 square yards, a notarized copy of a memo dated 07.05.1995, showing receipt of earnest for the purchase of Plot No. 745, Block W/2, Scheme No. - 2nd, Juhi, Kanpur executed by Harpal Singh son of Roopnarayan Tripathi in favour of Dinesh Kumar Tripathi and a similar memorandum of receipt of earnest for another property dated 09.02.1996, executed by its owner, and, a photostat copy of Form No. 54 attested by the Project Director, District Rural Development Agency, Kanpur relating to the accident, a photostat copy of the certificate of registration relating to the ill-fated car, and a copy of the insurance certificate relating to that car.

20. Along with still another list of documents bearing Paper No. 54 ¶, a certified copy of the judgment and award passed by the Motor Accident Claims Tribunal/District Judge, Kanpur Nagar dated 21.08.2000 in M.A.C. Case No. 90 of 1997 was filed.

21. The owner, the insurers, the car owner and the Insurance Company have not led any oral evidence. The owner has filed, through a list of documents bearing number 27 ¶, four documents - the first being a notarized copy of the registration certificate relating to the offending truck, the second, a notarized copy of the transport permit relating to the said truck, the third, a notarized copy of the insurance policy covering the truck, and the fourth, a notarized photostat copy of the truck driver's driving license. The insurers produced their documentary evidence *vide* list of documents bearing Paper No. 64 ¶. They filed a copy of the insurance policy and the driving license of the offending truck's driver and a photostat copy of the insurance policy.

22. The Tribunal has decided Issue Nos. 1, 2 and 3 together, and it was held that on the basis of the evidence on record, it is not proved that the

accident giving rise to the crime ever happened. Thus, Issue Nos. 1, 2 and 3 were answered against the claimants. Issue Nos. 4 and 5 were answered together in the manner that both the offending truck and the ill-fated car were validly insured on the date and time of the accident. Issue No. 6 was decided, holding that at the time of the accident, neither the driver of the truck nor that of the ill-fated car held a valid driving license. Issue No. 7 was decided by the Tribunal in the manner that going by the contradictory evidence on record, it was not possible to determine the deceased's income.

23. In consequence of these findings, the claim petition was dismissed by the impugned judgment and award passed by the Tribunal.

24. Aggrieved, this appeal has been preferred by claimants.

25. Heard Mr. Naushad Siddiqui, Advocate holding brief of Mr. S.D. Singh Jadaun, learned Counsel for the claimants, Mr. B.C. Naik, learned Counsel for the insurers, Mr. Shiv Nath Singh, learned Counsel for the car owner and Mr. Nagendra Kumar Srivastava, learned Counsel appearing on behalf of the Insurance Company. No one appears on behalf of the owner.

26. It is argued by the learned Counsel for the claimants that while determining Issue Nos. 1, 2 and 3, the Tribunal has approached evidence from a manifestly wrong vantage. The learned Judge has tried to pick holes in the evidence by saying that two other passengers on board car, Sub-Inspector, Gajendra Singh and Assistant Prosecuting Officer, Vikram Singh were not called to the witness box to prove the accident. The First Information Report related to the accident was lodged by one Faguni Ram. The claimants did not produce Faguni Ram to establish the *factum* of accident. The First Information Report was lodged on the next day following the accident, whereas a *panchayatnama* was drawn up a day before, under orders of the Superintendent of Police. It is argued by the learned Counsel for the claimants that the learned Trial Judge has

committed a manifest error of law, ignoring the consistent authority of the Supreme Court, which holds that the Tribunal ought not to decide a Motor Accident Claim as if it were a criminal trial, and, the claimant, the prosecution. The Act of 1988 is a social welfare legislation and must receive a liberal construction, consistent with its objects. The Tribunal has placed burden upon the claimants to prove the *factum* of accident and disbelieved it, adopting a hypertechnical approach. It is particularly submitted that the Tribunal has ignored from consideration the judgment and award passed in Motor Accident Claim Petition No. 90 of 1997, Vikram Singh v. Prem Shankar and another, decided on 21.08.2000 by Motor Accident Claims Tribunal, Kanpur Nagar. A certified copy of this award was duly brought on record before the Tribunal prior to the impugned judgment, but the Tribunal, despite noticing it as one of the documents, has not at all considered it while returning findings on Issue Nos. 1, 2 and 3.

27. The insurers, on the other hand, who have contested the claimant's appeal submitted through learned Counsel that the *factum* of accident has to be established by the claimants before the Tribunal by oral, documentary and circumstantial evidence. The claimants have relied upon the judgment of the Tribunal at Kanpur Nagar in Motor Accident Claims Petition No. 90 of 1997 instituted by an injured victim of the same accident, where the *factum* of accident was accepted by the Tribunal. It is urged that the judgment of the other Tribunal is not admissible in evidence to prove the accident before the Tribunal, as rightly held.

28. This Court has keenly considered the submissions of learned Counsel for the appearing parties and perused the findings of the Tribunal on Issue Nos. 1, 2 and 3.

29. The Tribunal, going by the pleadings of parties, has remarked that whereas the claimants say that the accident happened on 29.05.1996 at

09:30 p.m., there being little dispute over the place of accident, the owner, the insurers and the Insurance Company in their written statement have denied the *factum* of accident.

30. In view of the aforesaid issue between parties that the Tribunal has noticed, it is concluded that burden lay upon the claimants to establish the *factum* of accident. The Tribunal has then gone on to say that according to the claimants' case, apart from the deceased, there were others on board the ill-fated car, but the claimants have not disclosed the name and address of the other passengers. The claimants have produced P.W.1 Jyoti Tripathi, who is not an eye-witness of the accident and her evidence is hearsay. The other witness, P.W.2, Akhilesh Tripathi, too did not witness the accident, and his testimony is, therefore, hearsay as well. The Tribunal has, therefore, discarded the testimony of both the witnesses produced by the claimants. It is remarked that P.W.2 Akhilesh Tripathi has said in his examination-in-chief that apart from the deceased, S.I. Gajendra Singh and A.P.O. Vikram Singh were also travelling on board the ill-fated car. There is no reason why Vikram Singh has not been examined as a witness, according to the Tribunal. It is also observed that the claimants have not given any evidence to the effect that it was not reasonably practicable to produce Gajendra Singh and Vikram Singh in Court. The persons last mentioned are eye-witnesses, and the Tribunal has remarked that by withholding the testimony of these witnesses, the claimants have prevented truth from unfolding before it. It has also been remarked that there is no testimony on behalf of the claimants to show as to who was driving the ill-fated car. The documentary evidence that has been produced shows that there is a certified copy of the First Information Report registered in relation to the accident. It was lodged by one Faguni Ram. The claimants have not produced Faguni Ram either in the witness box. The remark of the Tribunal is that it is evident, therefore, that the claimants have not produced any eye-witness of the accident.

31. Then, there are some very odd observations by the Tribunal. The learned Judge has observed that a certified copy of the postmortem report relating to the deceased's autopsy has been filed, which shows that the autopsy was done on 30.05.1996 at 02:35 p.m. A copy of the *panchayatnama* has been filed, which shows that it was done on 29.05.1996 at 03:10 a.m., whereas the First Information Report was lodged on 30.05.1996 at quarter past midnight. It is observed that there is a contradiction in the First Information Report, when it was registered at the police station and the inquest report. It is also remarked that the *panchayatnama* carries an order of the Superintendent of Police, directing the Station House Officer, Police Station Bhatsena to take necessary action. The date mentioned below the signatures of the Superintendent of Police is 01.06.1996, which is a day after the *panchayatnama* was actually drawn up. To top it all is a remark by the Tribunal, that the claimants have not at all clarified as to what were the circumstances that the *panchayatnama* was drawn up a day prior to the S.P's. order.

32. This Court must say that so far as the *factum* of the accident is concerned, it has been disbelieved by the Tribunal on account of some variation of the date and time of registration of the First Information Report shown in the check F.I.R., the autopsy report and the other police papers, besides the fact that the S.P's. orders on the *panchayatnama* are of a later day than the inquest proceedings. These are not at all matters which ought to have weighed with the Tribunal in disbelieving the *factum* of accident. The latter remarks of the Tribunal, picking holes in the claimants' case due to variation of the time of registration of the F.I.R., comparing it with other police papers, is reminiscent of the judgment of a Criminal Court in yesteryears, doubting the prosecution on the basis of ill-matching entries of date, time etc. in various police papers, such as the check F.I.R., the autopsy report and the inquest report. That could never

have been the approach of the Motor Accident Claims Tribunal, where the jurisdiction is not plain adversarial, but substantially inquisitorial.

33. In this connection, reference may be made to the judgment of the Supreme Court in **Rajwati alias Rajjo and others v. United India Insurance Company Limited and others**³. In **Rajwati (supra)**, it has been held :

18. Reference in this connection may also be made to the observations made by this Court in the case of *Sunita v. Rajasthan State Road Transport Corporation**, wherein it was observed as under:—

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

19. Similarly, in the case of *Kusum Lata v. Satbir*[#], this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

34. But this is about one part of the Tribunal's reasoning, that is to say, the one where it has gone on a tangent to criticize the claimants' evidence by fishing out contradictions in police papers relating to the crime concerning the accident. It still leaves to be judged if the claimants, by any evidence *aliunde*, have established the *factum* of accident. It is true that two witnesses produced by the claimants are not eye-witnesses of the occurrence. It is also true that the two other passengers on board the ill-fated car, whose names have been mentioned by P.W.2 Akhilesh Tripathi

3 2022 SCC OnLine SC 1699

* (2020) 13 SCC 486

(2011) 3 SCC 646

in the witness box, were not produced on behalf of the claimants. They could have done that, but for reasons best known to them, did not do so. It is also true that the first informant, Faguni Ram, who was apparently an eye-witness of the accident, was also not produced in the witness box on behalf of the claimants. These flaws are, no doubt, there in the claimants' testimony, and the Tribunal is not wrong in pointing these out. The question that still remains is : Whether the *factum* of the accident is not otherwise established? It is a well-reputed principle of law that admission in pleadings is good proof of a fact in issue, let alone a relevant fact. No doubt, the *factum* of accident is a fact in issue, if one were to employ the parlance of the Indian Evidence Act, 1872. The owner of the offending truck has averred in paragraph No. 8 of the written statement, Paper No. 25 ख :

8- यह कि कथित घटना वाद पत्र के अनुसार सही नहीं दर्शाई गयी है। उत्तरदाता का चालक सड़क नियमों का पालन करते हुए धीमी गति से वाहन चला रहा था। सम्पूर्ण घटना मारुती कार – यू.पी.-78 एल/9280 के चालक की तेजी व लापरवाही से चलाने के कारण घटित हुई है। ट्रक चालक की दुर्घटना में कोई गलती नहीं थी।

35. In the written statement filed on behalf of the insurers, while it is denied in paragraph No. 7 that the accident, on the date, time and place alleged, never happened between the offending truck and the ill-fated car, the alternate plea in paragraph No. 8 of the written statement reads :

यह की मारुती स्वामी तथा याचीगण को यह भी साबित करना है की कथित दुर्घटना के समय व दिन मारुती कार नं०-यू०पी०-78 एल०/9280 बैध रजिस्ट्रेशन, सही रूपसे परमिट व फिटनेश आदि से चल रही थी, यदि उपरोक्त तथ्य वाहन स्वामी व याचीगण साबित नहीं कर पाते हैं तो प्रतिवादी उत्तरदाता की कोई जिम्मेदारी प्रतिकर अदा करने की नहीं है ।

36. Even if the plea in the alternative taken by the insurers were to be discounted, there is no case positively proved or evidence about it offered on behalf of the insurers that there was any kind of collusion between the owner and the claimants. Therefore, in the absence of a finding of

collusion between the owner and the claimants, the plenary admission by the owner in his written statement, that the accident did happen between the offending truck and the ill-fated car at the date, time and place alleged by the claimants is good proof of the fact.

37. Admission in pleadings stands on a much higher foot than admission in evidence. In this connection, reference may be made to the decision of the Supreme Court in **Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and others**⁴. In paragraph No. 27 of the report in **Naginadas**, it is observed :

27. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

38. Be it noted, that the admission here is in the owner's written statement. The primary liability to pay compensation is that of the owner. The insurers step in, because they have entered into a contract to indemnify the owner in terms of the policy. Unless it be shown and proved that there was a collusion between the claimants and the owner, the insurers cannot be heard against the owners' admission about the *factum* of accident.

39. Quite apart from the fact that the *factum* of accident is proved by the owner's admission, and not very seriously disputed in their pleadings by the insurers either, in fact, admitted by them in the alternative plea, there are other relevant documents to establish that the accident did happen. These are the police papers, that is to say, the first information report, the postmortem report, the *panchayatnama* and the site-plan. The

⁴ (1974) 1 SCC 242

Tribunal has looked into some of these documents, but disbelieved them, as already remarked, by putting them to scrutiny by the criminal standard. What, indeed, appears from a perusal of the police papers is the fact that the accident did happen between the offending truck and the ill-fated car, where the number of both vehicles is disclosed, as also the fact that the car and the truck were lying abandoned at the site of the accident. Three persons were reported seriously injured. No doubt, the F.I.R. does not name the deceased as one of the victims, but, after a full-fledged investigation, the Police have charge-sheeted the driver of the offending truck *vide* charge-sheet dated 30.11.1996, that is on record.

40. It is also not in dispute that the criminal case registered against the driver of the offending truck was converted to one under Section 304-A of the Penal Code, after the deceased passed away. Neither the insurers nor the owners have come up with a case that the aforesaid case was registered, investigated and the driver charge-sheeted in relation to some accident, where the deceased was not the victim. The insurers could have summoned the records of the criminal case to show, at least by one important piece of evidence of theirs, who was/were the victim(s) who died in the accident subject matter of the relevant crime. No doubt, it is true that the proceedings before the Criminal Court, or for that matter, investigation by the Police, does not bind the Tribunal at all, but the proceedings, during investigation by the Police and the Criminal Court, are relevant evidence for the Tribunal to act upon. The Tribunal has not at all considered the documentary evidence relating to the criminal case in that perspective. Instead, it has gone on to find petty faults with the police papers and investigation to disbelieve the *factum* of accident. That approach is clearly flawed, as already said.

41. The approach of the Claims Tribunal, far from that of a Criminal Court holding a trial, has to be very different. In ways more than one, it has to be less adversarial and more inquisitorial. The Tribunal is not

always to act as a Court of civil jurisdiction trying an action according to the provisions of the Code of Civil Procedure, 1908. The jurisdiction of the Tribunal is to hold an inquiry into the accident and determine just compensation payable to the injured, or the legal representatives of the deceased, as the case may be.

42. The provisions of the Act governing proceedings before the Tribunal in a claim petition are specified, particularly by Sections 168 and 169 of the Act of 1988. These read :

168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned

expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals.—(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

43. The question as to what should be the approach of the Tribunal in deciding a motor accident claim, fell for consideration before a Division Bench of the Calcutta High Court in **Sri. Srikrishna Kant Singh v. Sri. Parameswar Achutanandan Nair and others**⁵. The subject received the most elaborate treatment at the hands of their Lordships in **Srikrishna Kant Singh** (*supra*). Though their Lordships took into consideration for some part of the reasoning, not all, the provisions of the West Bengal Motor Vehicle Rules, 1989⁶, the Uttar Pradesh Motor Vehicle Rules, 1998⁷ framed under the Act of 1988, that came into force much after the accident were, nevertheless, rules governing the procedure when the motor accident claim here was inquired into or tried by the Tribunal. The Rules of 1998 being essentially rules of procedure governing the Tribunal constituted under the Act of 1988, would govern the procedure by which the claim would be inquired into by the Tribunal, when it came up. There is much similarity between the Bengal Rules and the Rules of 1998, leading this Court to safely depend upon the observations of their Lordships regarding the manner in which a claim under the Act of 1988 has to be inquired into by the Tribunal. In **Srikrishna Kant Singh**, the question was posited by the Court thus :

5 2019 (4) TAC 920 : 2018 SCC OnLine Cal 5308

6 'the Bengal Rules' for short

7 'the Rules of 1998' for short

23. However, that brings me to the overwhelming question. Is a proceeding under Section 166 of the Motor Vehicles Act, 1988 an adversarial proceeding? To answer this, I am afraid, I will have to take eternity by the hand and pause while the Court looks at the provisions of the Motor Vehicles Act, 1988, the West Bengal Motor Vehicles Rules, 1989 and some authoritative precedents.

44. There is, after an elaborate reference to the provisions of the Act of 1998 and the Bengal Rules, the following remarks of their Lordships :

29. The fact that the tribunals established under Section 165 of the Act of 1988 are manned by the members of the subordinate judiciary does not change it into a Court rather than a statutory tribunal discharging statutory functions of holding an inquiry into just compensation and who is required to pay it. Similarly, the provisions in Rule 342 and Rule 343 making certain provisions of the Code of Civil Procedure directly applicable to the proceedings before the Learned Tribunal, and where there is no provision made for a certain thing in either the Act or the Rules, making the provisions of the Code applicable thereto, will not change the Learned Tribunal into a civil court.

30. This becomes clearer when the provisions of Section 169 of the Act of 1988 are considered. Sub-section (2) makes it amply clear that the Tribunal shall have all the powers of a civil court for specified and other purposes as may be prescribed and shall only be "deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure", but not a "court" for the purposes of the Code of Civil Procedure. That is why it was required to specify the provisions under the Code of Civil Procedure which apply to proceedings before such Tribunal even while constituting it as a special tribunal. The specified and other purposes, are clearly the determination of just compensation and who shall be liable to pay it.

31. Therefore, it is evident that a "Claims Tribunal" established under Section 165 of the Motor Vehicles Act, 1988 is not a civil court though it has many of the powers of a civil court and many of the provisions of the Code of Civil Procedure apply to it and this Court holds accordingly.

32. Once the statutory scheme read with the rules made to give effect to that scheme are considered, in the light of my above finding it is evident that the mode of proceeding before this special tribunal whose function is to inquire into and "adjudicate claims for compensation in respect of accidents involving the death of, or bodily

injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both", is actually to hold an inquiry into the claim and make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom compensation shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

33. Once this conclusion is reached, it is irresistible that strict rules of adversarial action, with which the Learned Members of such a Tribunal are very familiar, due to the qualifications prescribed in Section 165(3) of the Act of 1988, would not apply to such a Tribunal and it has been empowered to act inquisitorially unless expressly forbidden. Once it is accepted that the scheme of the statute and the rules, for the purposes of determining compensation, fixation of liability, and determining who is to pay what to whom, envisages an inquisitorial procedure, the requirements of adversarial proceedings take a back-seat, in the interests of the quest for truth.

.....

35. I draw confidence from the Judgement of *Mayur Arora v. Amit @Pange*, reported in (2011) 1 TAC 78 where the Hon'ble High Court of Delhi, while interpreting the above statutory provisions and the corresponding and substantially in pari materia provisions of the Motor Vehicles Rules of Delhi, in the light of the judgment of the Hon'ble Supreme Court in the case of *Jai Prakash v. National Insurance Company* reported in (2010) 2 SCC 607 has been pleased to hold as follows:-

"The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation."

36. However, it should be noted that the said portion of the judgement in the case of *Mayur Arora* (supra) was a direct quotation from the case of *Jai Prakash* (supra) where the Hon'ble Supreme Court was concerned with accidents in respect of which proceedings were started

under Sections 158(6) and 166(4) of the Act of 1988 and the directions issued to the Learned Tribunals were in respect of proceedings thereunder, which were stated to be without prejudice to the duty of the Learned Tribunal in other cases, where too the duty to hold an inquiry instead of proceeding as if it was a regular civil suit, was mandated by the Hon'ble Supreme Court.

37. Again, one of the propositions of law laid down by the Hon'ble Supreme Court in the case of *United India Insurance Co. Ltd. v. Shila Datta*, reported in 2011 ACJ 2729 (SC) is that

"Though the Tribunal adjudicates a claim and determines the compensation it does not do so as in an adversarial litigation".

(emphasis supplied)

These findings are of immense importance to the case at hand, as shall appear from the records of the case brought before this Court, and the facts apparent therefrom and the submissions made.

45. Seen thus, the fault-picking approach of the Tribunal in this case, where date and time in the police papers have been juxtaposed for fishing out the slightest of variation to hold against the claimants, cannot be countenanced, considering the inquisitorial duties of the Tribunal, while determining the compensation in a motor accident compensation claim. This Court would think that Rule 215 of the Rules of 1998 are particularly relevant. Rule 215 reads :

215. Power of examination.— The Claims Tribunal may if it thinks necessary, examine any person likely to be able to give information relating to the injury irrespective of the fact whether such person has been or is to be called as a witness or not.

46. In the present case, where the Tribunal thought that there were two other men on board the ill-fated vehicle, who had sustained injuries in the accident, but were not produced as witnesses by the claimants, ought to have invoked its powers under Rule 215 of the Rules of 1998 to summon at least one of them. Their names have figured in the impugned judgment, as Gajendra Singh and Vikram Singh. One of them was a Sub-Inspector of Police and the other, an Assistant Prosecuting Officer. One of these

victims of the accident and a survivor instituted a claim petition before the Tribunal at Kanpur Nagar, and was awarded compensation, holding the accident to be proved and the injuries sustained by him established. The judgment of the Tribunal at Kanpur Nagar was produced before the learned Judge presiding the Tribunal in this case. While the judgment of the Kanpur Nagar Tribunal may not, as such, be relevant evidence, it was certainly relevant for the Tribunal to have acted under Rule 215 of the Rules of 1998 and summoned Vikram Singh as a witness while inquiring/trying the present claim. Instead, each of the two witnesses produced by the claimants were held by the Tribunal to be of no credit, as speakers of hearsay. The approach of the Tribunal, indeed, is far from what the statute requires it to be.

47. In this view of the matter, the findings of the Tribunal on Issue Nos. 1, 2 and 3 cannot be sustained. There is no occasion to disturb the findings of the Tribunal on Issue Nos. 4 and 5 that have been inquired into by the Tribunal, holding both vehicles to be validly insured on the date of the accident. However, for all the reasons that we have held, the Tribunal's findings on Issue Nos. 1, 2 and 3 to be vitiated, the finding on Issue No. 6 is also held bad.

48. The finding on Issue No. 7 not crediting the deceased with any income, whatsoever, is perverse.

49. There is on record oral testimony and a partnership deed about the deceased's business, which mention his partners. In any case, he was supporting three of his children and parents, besides a brother. Looking to the deceased's age, to think that he would not have any income is, in our considered opinion, a conclusion which no reasonable person can draw. We do not wish to say anything more on this issue, considering the fact that we propose to set aside the impugned award and remit the claim to the Tribunal now competent for a *de novo* inquiry/trial.

50. In the result, this appeal **succeeds** and shall stand **allowed in part**. The impugned judgment and award passed by the Motor Accident Claim Tribunal, Etawah is **set aside**, with a remit of the matter to the Motor Accident Claims Tribunal, Etawah, now competent under the law to inquire into the claim. Motor Accident Claim Petition No. 127 of 1997 shall, therefore, stand restored to the file of the competent Tribunal, which shall inquire into the claim, taking all such evidence as may be necessary to effectively determine the claimants' entitlement to compensation, if any. The evidence already on record too shall be considered. The claim petition shall be heard and decided within a period of six months of the date of receipt of a certified copy of this judgment, in accordance with law, bearing in mind the guidance here.

51. There shall be no order as to costs.

Order Date :- October 16, 2023

I. Batabyal

(J.J. Munir, J.)