

Neutral Citation No. - 2024:AHC-LKO:42825

Reserved/AFR

Court No. - 3

Case :- FIRST APPEAL FROM ORDER No. - 120 of 2012

Appellant :- Bindheshwari Devi Srivastava And Others

Respondent :- Ramesh Chandra Maurya And Others

Counsel for Appellant :- Somesh Tripathi, Jay Krishna Shukla

Counsel for Respondent :- O P Srivastava

Hon'ble Rajnish Kumar, J.

1. Heard, Shri Somesh Tripathi, learned counsel for the appellant-claimants and Shri O.P.Srivastava, learned counsel for the respondent no.3. None appeared on behalf of respondents no.1 and 2 despite the notice has been served upon them personally.

2. This First Appeal From Order has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 07.01.2012 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.1, Raebareli in M.A.C. No.270 of 2010; Bindheshwari Devi Srivastava and others Versus Ramesh Chandra Maurya and others, by means of which the Claim Petition filed by the appellant-claimants has been dismissed.

3. Learned counsel for the appellant submitted that on 07.08.2010 at about 4.00 in the evening when the deceased Ashok Kumar Srivastava was waiting for some person on the side of Lucknow-Allahabad Highway near the gate of Pragatipuram Colony near his motorcycle, the Truck, which was being driven rashly and negligently by its Driver dashed to the deceased and

his Motorcycle from the back side and crushed the Motorcycle as well as the deceased, who succumbed to the injuries suffered in the accident. The accident was an outcome of the rash and negligent driving of the driver of the Truck, but learned Tribunal without considering it and applying the principle of 'res ipsa loquitur' wrongly and illegally held that the accident was on account of the negligence of the deceased, therefore, the appellant-claimants are not entitled for any compensation. He further submitted that the accident on 07.08.2010 at 4.00 in the evening at Lucknow-Allahabad Highway is neither disputed nor the death of the deceased on account of the said accident, but learned Tribunal while applying the principle of 'res ipsa loquitur' and merely on the basis of technical report of the vehicles held that the accident has occurred due to negligence of the deceased, but failed to consider that when the accident was on the Highway and the accident had occurred by the Truck which was coming from the opposite direction, it cannot be said that there was no negligence on the part of the Driver of the offending Truck, even if there may be some negligence on the part of the deceased, whereas there was no negligence on his part.

4. Learned counsel for the appellant-claimants further submitted that the learned Tribunal failed to consider that the First Information Report was lodged in regard to the accident against the Truck Driver and the charge-sheet has been filed against him, therefore, prima facie, rash and negligent driving of

the Driver of the Truck is proved, which is sufficient to award the compensation.

5. On the basis of above, submission of learned counsel for the appellant-claimants is that the impugned judgment and order passed by the Motor Accident Claims Tribunal is not sustainable and liable to be set aside and the application for compensation filed by the appellant-claimants is liable to be allowed and the widow, daughters and minor sons and the mother of the deceased, who was an employee of I.T.I. Limited, Raebareli and working on the post of Senior Technical Assistant are entitled for the compensation.. Learned counsel for the appellant-claimants relied on **Mallamma Versus Balaji and others; 2003 (2) T.A.C. 482 (Kant.), S.Kaushnuma Begum and others Versus The New India Assurance Co.Ltd. and others; AIR 2001 Supreme Court 485 and The New India Assurance Co. Ltd. Versus Pazhaniammal and others; (2011) 4 TAC 481.**

6. Per contra, learned counsel for the respondent no.3; the National Insurance Company Limited vehemently opposed the submissions of learned counsel for the appellant-claimants. He submitted that the deceased had suffered the injuries in the accident on account of his own negligence and succumbed to the same. As per own case of the appellant-claimants the deceased was standing on the side of the road facing towards Lucknow when the Truck came from the opposite side and he got injuries in the accident, whereas if he was standing facing towards the side

from which the Truck was coming, he could have saved himself but he had not tried to save him. He further submitted that since the pleading in the claim petition and the evidence in regard to occurrence was contradictory, therefore learned Tribunal has rightly and in accordance with law applied the principle of 'res ipsa loquitur' and held that the accident had occurred on account of negligence of the deceased, therefore the appellant-claimants are not entitled for any compensation and the claim petition has rightly been dismissed. He further submitted that the technical reports of the vehicles also indicate that the accident was on account of negligence of the deceased. On the basis of above, submission of learned counsel for the respondent no.3 is that the impugned judgment and order has been passed in accordance with law. There is no illegality or infirmity in it. The appeal has been filed on misconceived and baseless grounds. It is liable to be dismissed.

7. I have considered the submissions of learned counsel for the parties and perused the records.

8. The claim petition was filed by the appellant-claimants alleging therein that on 07.08.2010 at about 4.00 in the evening the deceased, who was an employee of I.T.I. Ltd., Raebareli working on the post of Senior Technical Assistant, was waiting for some person on the side of Lucknow-Allahabad Highway alongwith his motorcycle having Registration No.UP-33-P-3373, when the Truck having Registration No.UP-78-B-4281 coming

from the side of Ratapur Crossing being driven rashly and negligently by its driver dashed to the deceased and his Motorcycle from the back side and crushed the Motorcycle as well as the deceased, who succumbed to the injuries sustained in the accident in the District Hospital, Raebareli. First Information Report of the accident was lodged vide Case Crime No.1038/2010, under Sections 279, 338, 427 and 304-A IPC at Police Station-Mill Area, District-Raebareli against the Driver of Vehicle No.UP-78-B-4281. The Truck was apprehended on the spot of accident by the public, which was got released by the owner from the Court and the driver has been released on bail. The charge sheet has been filed against the Driver of the Vehicle and the criminal case is going on. The deceased was working in I.T.I. Ltd., Raebareli and drawing monthly salary of Rs.18,612.58 and was the only earning member of his family and accordingly the compensation of Rs.52,28,000/- was claimed.

9. A common written statement was filed by the respondents no.1 and 2 i.e. the owner and Driver of the Truck bearing Registration No.UP-78-B-4281 denying the averments made in the claim petition. However it is admitted that the respondent no.1 is registered owner of the Truck and it is insured by the National Insurance Company Ltd., Raebareli, which was valid from 15.07.2010 to 14.07.2011. The respondent no.2 is the Driver of the Truck No.UP-78-B-4281, who is having a valid Driving Licence issued from the Regional Transport Officer, Raebareli,

which is valid from 01.04.2010 to 31.03.2013. The respondents no.1 and 2 denied the accident from the said Truck. However it was stated that since the Truck was insured, therefore, the respondent no.3-National Insurance Company Ltd. is liable to pay the compensation, if any.

10. The respondent no.3-National Insurance Company Ltd. filed written statement denying the averments made in the claim petition. It was stated in the written statement that the Truck and the Motorcycle were not involved in the accident. In the alternative, it was pleaded that if the offending Truck No.UP-78-B-4281 is found to have involved in the accident, the Insurance Company is entitled for benefit of Section 147 of the M.V.Act because it was not being driven in accordance with law and terms and conditions of the policy and it was being driven without Truck permit, fitness, Registration Certificate and valid and effective Driving Licence of the Driver. It was also pleaded that the Insurance Company cannot be held liable because the details of the driving licence of the Driver have not been placed on record by the owner in accordance with Section 134(c) of the M.V.Act. The concerned Police Station has also not provided the relevant information in terms of Section 158(c) of the M.V.Act. It was also pleaded that on account of negligence of the deceased the Insurance Company is not liable to pay the compensation. The First Information Report, post-mortem report etc. have not been provided to the Insurance Company. It was also pleaded that the

Truck was not being driven rashly and negligently, rather the accident had occurred on account of contributory negligence of the deceased.

11. On the basis of pleadings of the parties six issues were framed by the Tribunal. Smt. Bindheshwari Devi Srivastava i.e. the appellant-claimant No.1/wife of the deceased appeared as CPW-1, Mohd. Nazim as CPW-2 and Chandra Kumar Srivastava, Senior Office Assistant of I.T.I. Ltd., Raebareli as CPW-3. The relevant papers were also placed on record. Shri Shiv Shanker Maurya, the Driver of the Truck appeared as D.W.1. The Registration Certificate, Insurance Certificate, Driving Licence etc. were placed on record by the respondents no.1 and 2. No oral evidence was adduced by respondent no.3. However the accident inspection report, Panchnama, sketch plan etc. were placed on record by the respondent no.3.

12. After considering pleadings of the parties and affording opportunity of hearing the Tribunal came to the conclusion that the evidence adduced by the appellant-claimants does not match with the averments made in the claim petition that the accident had occurred, while the deceased was standing on the right side of Lucknow-Allahabad highway near gate of Pragati Puram Colony, the truck coming from the side of Lucknow dashed from the back side. As per CPW-2, the deceased was standing facing towards Lucknow and the truck had come from the side of Lucknow, wherefore the Truck could not have dashed from the

back side if his face was towards Lucknow, from which side the truck was coming and according to him the deceased had not tried to save him. Thereafter the Tribunal applying principle of 'res ipsa loquitur' and examining the technical reports of the vehicles and considering that the front show of the Truck at Sl.No.11 in the technical report is damaged from the right side and at Sl.No.19 the right light is in order, whereas the right indicator is damaged and the front bumper on the right side is also damaged, on account of which it appears that the deceased while coming from I.T.I, Ltd., Raebareli from his service, without any evidence in this regard and as to what is the timing of office and the way of coming from office, turned from the left side of the road to the right side when the Truck coming from the side of Lucknow would have dashed the left side of handle of the Motorcycle in which the deceased suffered injuries on account of his own negligence. However learned Tribunal failed to consider that CPW-2 stated that the deceased was standing facing Lucknow side, but immediately thereafter stated that the deceased was standing on his left side at about 10 steps away and since his face was on the other side he could not see the speed and manner of driving of truck and he had seen the accident. Therefore if the deceased was standing on the left side of the CPW-2, then he could not have seen his actions, however he has categorically stated that he had seen the accident, but the tribunal failed to consider it.

13. The learned tribunal without any evidence and examination of the person who had prepared the technical reports of vehicles has recorded a finding that the technical report was prepared by Anant Ram Tiwari without any influence of any person from the side of the Insurance Company or owner of the vehicle. However on perusal of the accident inspection report of both the vehicles i.e. the offending Truck having Registration No.UP-78-B-4281 and the Motorcycle of the deceased having Registration No.UP-33-P-3373, this court is of the view that learned Tribunal erred in holding that the right bumper of the Truck would have dashed the left handle of the Motorcycle on account of which the accident had occurred, therefore no negligence of the offending Truck driver is proved and it is self proved on the basis of it that the accident was on account of sole negligence of the deceased because if the accident would have occurred as per imagination of the Tribunal as described by it applying the principle of 'res ipsa loquitur', the truck could not have dashed only the left side of handle of the Motorcycle, but it would have certainly dashed front wheel also alongwith the handle of the Motorcycle because it is not the case of none of the parties that there was any divider and cut at the place of accident on the road from where the deceased may have taken 'U' turn for going to the Pragati Puram Colony on the opposite side, or even otherwise taken 'U' turn because left handle would have been dashed only if a vehicle is going ahead of the offending vehicle or if coming from the opposite side takes

‘U’ turn and thereafter coming on the side of other vehicle and in such situation the negligence or fault of offending truck cannot be denied.

14. On examining the findings recorded by the Tribunal in the light of the accident inspection report of the Motorcycle at Sr.No.12 the handle is damaged and at Sr.No.19 head light is damaged and both the indicators are broken, but there is no report that the handle of the motorcycle was damaged from the left side only. Both the tyres and rim of the Motorcycle are also in good condition as per condition of tyres at Sl.No.16 of the accident inspection report of Motorcycle having Registration No.UP-33-P-3373. However the Mud Guard is damaged and Dikki is broken. The accident inspection report of the Truck No.UP-78-B-4281 also indicates at Sl.No.19 that head light of the truck is in order, whereas the right side indicator is broken and both the back lights are broken and the front bumper at the right side is damaged. Therefore only on the basis of accident inspection report of the vehicles the presumption drawn by the Tribunal in regard to the manner of accident, on account of which the deceased had died, is not correct and this court is of the view that the findings have been recorded without considering and appreciating the whole evidence appropriately, therefore it is not sustainable.

15. Even otherwise if it is taken to be correct the negligence or fault of Truck Driver, which was coming from the opposite side of the road on the Lucknow-Allahabad Highway and passing from

the City, where the residential Colony is situated, cannot be ignored and it cannot be said that there was no negligence of the Truck Driver, if he was not completely liable for the accident on account of rash and negligent driving of the vehicle.

16. The respondent no.2 Shiv Shanker Maurya, Driver of the Truck No.UP-78-B-4281 appeared as D.W.1, who has admitted the accident and the Truck was apprehended on the spot in front of Gate of Pragati Puram Colony and he was driving the vehicle at the time of accident which was got released from the Court. He has also admitted that he had ran away from the spot, therefore, if there would have no negligence or fault of the Truck Driver, he would not have ran away from the spot. However it may not be the only ground for holding negligence or fault of the driver. The F.I.R. was lodged against the truck driver and after investigation charge sheet has been filed by the police, therefore the allegation of rash and negligent driving of driver of truck has been found prima facie proved and the trial is going on, therefore it is also to be considered in the light of the evidence adduced before the Tribunal.

17. The High Court of Karnataka, in the case of **Mallamma Versus Balaji and others (Supra)**, has held that filing of the charge-sheet against the driver is also a prima facie case to hold that the driver was responsible for the accident and burden shifts on him to prove the same. The High Court also considered with reference to several judgments as to when and how the principle

of 'res ipsa loquitur' i.e. "speak for itself" can be applied. The

Relevant paragraphs 8 to 12 are extracted below:-

"8. In this connection, reference may be made to a decision reported in *The United India Fire and General Insurance Company Limited v. Maddali Suseela* [1979 ACJ 110.] wherein the Division Bench of the Andhra Pradesh High Court has observed in Para 25 as under:—

"The maxim res ipso loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so cause."

The following passage from *Halsbury's Laws of England* (3rd edition at page 77) is very inceptive:

"An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous".

"In *Pushpabai v. Ranjit G & P. Co.* referring to the doctrine of res ipso loquitur the Supreme Court said at page 346 thus;"

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who cause it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.

It is further observed thus:

"Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might probably have happened in a manner which did not connote negligence on this part."

"The general principle is that he who alleges a fact must prove it. Normally it is the duty of the plaintiff who alleged negligence to prove the same."

9. Therefore, keeping in mind the ratio laid down in the aforesaid two decisions, it can be held that the driver of the milk tank was mainly responsible for the accidental death of late Bhimaraya.

10. In a recent decision of the Supreme Court in case of *Smt. Kaushnuma Begum v. New India Assurance Company Limited* [ILR 2001 Kar 493.] wherein it was held that "jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of Motor Vehicles.

Negligence is one of the Species of the Causes of action for making a claim for compensation in respect of Accidents arising out of the use of Motor Vehicles. There are other premises for such cause of action.”

11. In another decision of the Supreme Court in case of *Pushpabai Parshotam Udeshi v. Ranjit Ginning and Pressing Co. Pvt. Ltd.* [(1977) 2 SCC 745 : AIR 1977 SC 1735.] wherein it was held that “Motor Vehicles Act (1939) Section 110A(1)(b) - Death caused due to rash and negligent driving - Compensation - Rash and negligent driving - Proof-Burden - Application of principle “res ipsa loquitur - Requirements.”

12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same.”

18. The Hon’ble Supreme Court, in the case of **Sunita Versus Rajasthan SRTC; (2020) 13 SCC 486**, has observed that the Tribunal had justly placed reliance on the contents of FIR and charge-sheet which prima facie indicate the negligence in driving bus.

19. The Hon’ble Supreme Court, in the case of **S.Kaushnuma Begum and others Versus The New India Assurance Company Ltd. (Supra)**, has held that even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happen while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident.

20. The Division Bench of High Court of Kerala at Ernakulam, in the case of **New India Assurance Company Limited Versus Pazhaniammal and others (Supra)**, has held that the quality of evidence to prove negligence and the extent of negligence to be

established is certainly different from culpable negligence punishable under the criminal law and the Tribunals cannot look at the question as an umpire in an adversarial litigation between parties. It has further been held that in the absence of specific pleadings and evidence, if the totality of the circumstances convince the Tribunal that there has been negligence, the Tribunal will certainly be justified in passing an award under Section 166 of the Motor Vehicles Act. The relevant paragraph 10 is extracted here-in-below:-

“10. Notwithstanding Section 140 and 163 A of the Motor Vehicles Act even now in a claim under Section 166 of the Motor Vehicles Act negligence has to be established. But the quality of evidence to prove negligence and the extent of negligence to be established is certainly different from culpable negligence punishable under the criminal law. Tribunals cannot look at the question as an umpire in an adversarial litigation between parties. Even in the absence of specific pleadings and evidence, if the totality of the circumstances convince the Tribunal that there has been negligence, the Tribunal will certainly be justified in passing an award under Section 166 of Motor Vehicles Act. Tribunals called upon to discharge the legislature mandate of ensuring just and reasonable compensation to the victims cannot function merely as umpires in an adversarial litigative process. The Tribunals should play the dynamic role expected of them under a welfare legislation in a socialist republic to effectively and expeditiously translate the compassion of the legislature into tangible benefits to the victims. The primary mandate to and the very purpose of constitution of the Tribunal under the provisions of the Motor Vehicles Act is to ensure just and reasonable compensation to the victims and the Tribunal should not and can never afford to ignore that basic tenet. In that view of the matter we are satisfied that the materials available sufficiently justify the impugned award.”

21. In view of above and considering the overall facts and circumstances of the case this court is of the view that the learned Tribunal has failed to examine and scrutinize the evidence correctly and in right perspective and has also failed to apply the principle of ‘res ipsa loquitur’ correctly, therefore this court is of the view that the impugned judgment and order passed by the Motor Accident Claims Tribunal is not sustainable in the eyes of

law and it is liable to be set aside and matter is liable to be remitted back to the concerned Tribunal to pass a fresh order in accordance with law.

22. The appeal is **partly allowed**. The matter is remitted back to the concerned tribunal to pass a fresh order in accordance with law and in the light of observations made in this order expeditiously and preferably within a period of six months from the date of production of a certified copy of this order without granting unnecessary adjournment to either of the parties. No order as to costs.

23. The lower court record shall be sent back to the concerned Tribunal expeditiously and in any case within a period of two weeks from today.

(Rajnish Kumar,J.)

Order Date :-11.06.2024
Banswar