

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL st. NO.32974 OF 2015
with
CAF/4188/2015

The General Manager
Bombay Electric Supply & Transport Undertaking ... Appellant

Vs.

Mr.Murji Pancha Patel / Chaudhary ... Respondent

Mr.M.Kaizunkar a/w Namita Mistry i/b navdeep Vora & Asso. for the
Appellant

Ms.Varsha Cahvan a/w Gauri Chabriya for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **18th FEBRUARY, 2016**

P.C.:

1. The appeal challenges the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Mumbai, dated 29.7.2015 granting compensation of Rs.35,90,000/- with interest @ 7.5% from the date of the application. By the Civil Application, the applicant/appellant has challenged the rejection of the application below exhibit 61 vide judgment and order dated 29.7.2015. The appellant / BEST Undertaking had filed the said application for examination of witness and sought time of two weeks. In the Civil Application, the appellant not only prays that the impugned award be set aside but also prays to remand the matter and to allow the parties to lead further evidence and to pass a fresh award on the basis of this evidence.

2. The deceased, who was plying the motor cycle, was dashed by the BEST bus No.MH-01-L-9181 near Santacruz on 16.10.2004. One Kalamuddin D. Shaikh, who claimed to have witnessed the incident, is the first informant and gave the FIR to Santacruz police station on 16.10.2004. He was not examined either by the original claimants or the appellant in this claim before the Tribunal. However, this witness was examined by the appellant before the inquiry Officer in the enquiry conducted by the appellant BEST undertaking against the driver of the said bus, who is also the respondent in the claim application. The informant gave a totally different version in the D.E. and claimed that he was not present at the time of the incident. But, he was forced to sign on the FIR by the concerned police officer. The appellant wanted to examine the informant as their witness before the Tribunal. The learned Counsel for the appellant has submitted that alongwith Mr.Kalamuddin Shaikh, the appellant wanted to examine the starters working in the BEST whose duty is to keep timing of the arrival and departure of the buses who are running on different routes. So the application was moved on 29.7.2015 and it was rejected on the same day on the ground that the matter is old and High Court has issued circular that old matters are to be disposed of and the Tribunal has given sufficient opportunity to the opponent to lead evidence and hence, rejected. Hence, the learned Counsel for the appellant submitted that this matter be remanded.

3. The learned Counsel for the original claimants, the respondents in the appeal, has vehemently opposed this application and submitted that the matter cannot be remanded in view of the reasons mentioned in the rejection order passed by the Tribunal. She produced a list of the dates and events of the trial Court disclosing the roznama. She submitted that her application for examination of the sub-inspector of the Santacruz police station i.e., exhibit 53 was rejected on 10.7.2015. The said witness did not remain present though the applicant wanted to examine the said witness. She further submitted that the appellant BEST examined their witness on 21.7.2015 and thereafter, the matter was fixed for further evidence on 24.7.2015. However, on that day, the appellant could not produce any witness and, therefore, the Tribunal closed the evidence on the same day and the matter was posted on 29.7.2015 for arguments. The application at exhibit 61 was submitted on 29.7.2015 and it was rightly rejected for the reasons mentioned therein by the Tribunal. It is further submitted by the learned Counsel for the respondents that the appellant could not produce any documentary evidence in respect of enquiry proceedings where the statement Kalamuddin was recorded at the relevant time. They were not prohibited from producing the statement of Kalamuddin if it was in existence at the relevant time. She further submitted that the evidence of starters is not required as it is irrelevant. She further relied on section 166(4) and section 158 of the Motor Vehicles

Act, wherein the procedure is laid down for conducting the matter by the Tribunal wherein the Evidence Act and Code of Civil Procedure is not strictly applicable. Under section 158, it is the duty of the police station to send a copy of the FIR to the District Court immediately after the occurring of the accident. Thus, there is no valid ground to allow the application.

4. The roznama discloses that the claimants closed their evidence on 10.7.2015 and their application for examination of Sub-inspector of Santacruz police station under exhibit 53 was rejected. DW1 was examined on 21.7.2015. Thereafter the matter was fixed on 24.7.2015. The appellant should have produced witnesses on that day or should have given the application below exhibit 61 on that day that they wanted to examine more witnesses and should have sought time. However, it was not done and, therefore, the trial Court has rightly closed the evidence and fixed the matter for arguments on 29.7.2015. However, when the application was moved on 29.7.2015 by the appellant stating that the starters and one person is to be examined, the Court should have allowed the appellant to examine the starters as it is necessary for the Tribunal or the Presiding Officer to assess the facts on the basis of proper evidence. I must mention that in the application at exhibit 61, it was necessary for the appellant insurance company to mention the name of the witness whom they were going to examine. The reason given for rejecting the application cannot be justified. I am of the view that the parties be given an

opportunity to lead their evidence and the Tribunal, after recording further evidence, is required to decide the matter after assessing the evidence in its totality. The Tribunal has to bear the provisions of section 166 of the Motor Vehicles Act. The contents of the FIR so also, the contents in the spot / inquest panchanama can be read in the absence of oral evidence to prove those documents before the Tribunal. It is a special social relief oriented enactment. However, when evidence countering the FIR or the panchanama, the opposite party wants to lead to dislodge the FIR then, the Member, Tribunal should have allowed that application.

5. Whether the said evidence of the opponent is to be accepted or to be discarded is a matter of appreciation of evidence and that is to be considered by the Tribunal in its entirety. Alongwith this evidence of starter and Kalamuddin, it is necessary for the Tribunal to send witness summons to Investigating Officer from Santacruz police station and the person who recorded the FIR of Kalamuddin Shaikh. If at all any other witness is to be examined by the original claimants, shall also be allowed. However, both the parties are directed to keep the witnesses present on the next date and no time will be given to either of the parties. However, the Tribunal should issue witness summons to the concerned police officer and see that the concerned police officer should appear before the Tribunal. He may be considered as a witness of the Tribunal.

6. With this, I allow the civil application. The impugned order dated 29.7.2015 is set aside and the Appeal is remanded with the following directions:

- i) The parties to appear before the Tribunal on 2.3.2016 at 11am.
- ii) The parties shall present a list of the witnesses alongwith the grounds for examining each of the witnesses before the Tribunal.
- iii) The evidence led by the parties shall remain and to read and the said evidence shall not be recorded again.
- iv) The Tribunal may give suitable time thereafter and all the witnesses shall remain present and shall be examined according to the convenience of the Tribunal.
- v) The learned Member, Tribunal to endeavour to conclude the hearing of the matter on or before 30.5.2016.
- vi) The entire amount under the award alongwith interest accrued thereon deposited by the appellant BEST, shall not be withdrawn and be invested in any nationalised bank, as per the procedure.

vii) The statutory amount of Rs.25,000/-, which was deposited at the time of filing of appeal, is to be refunded by the Registry to the appellant.

7. First Appeal is disposed of in the above terms.

8. Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)