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(2010) 05 P&H CK 0132

High Court Of Punjab And Haryana At Chandigarh

Case No: None

The New India Assurance Company Ltd.	APPELLANT
Vs	
Smt. Pinki and Others	RESPONDENT

Date of Decision: May 5, 2010

Acts Referred:

- Limitation Act, 1963 - Section 5
- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2010) 4 RCR(Civil) 337

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

CM No. 11471-CII of 2010

1. This application u/s 5 of the Limitation Act has been moved for condoning the delay of 127 days in filing the appeal.

2. Reasons given for condoning the delay of 127 days read as under:

2. That the defending counsel at MACT received the certified copy of the award on 26.9.2009 and submitted the same in the office at Rohtak on 26.10.2009 but since appeal was recommended by him the Rohtak Office of the appellant Company asked him for certified copy of application u/s 170 and its orders, which was again submitted by the counsel on 16.11.2010. The Rohtak Office vide their letter dated 11.3.2010 recommend the file to the Regional office at Chandigarh and stated the reason for delay to be that the file was kept pending by the dealing hand Mr. Mohan Panwar. The file in original is with

you and the above stated fact are derived from the file itself.

3. Reading of the averments made above shows, that even though filing of appeal was recommended on 11.3.2010, the file was kept pending by the dealing hand. It is not disclosed as to why the file was kept by the dealing hand for such a long period, nor any affidavit is forthcoming from Mohan Panwar, explaining the reasons for withholding the file for such a long period, even though he was the person dealing with matter, in filing of appeal, and was well versed with the provisions of law of limitation. Explanation submitted, therefore, cannot be said to constitute sufficient cause for condoning the delay of 127 days in filing the present appeal.

4. The application for condoning the deal is accordingly dismissed.

5. There is otherwise also no merit in appeal.

FAO No. 2338 of 2010

6. This appeal by the Insurance Company, is directed against the award dated 10.09.2009, passed by the learned Motor Accident Claims Tribunal, Rewari (for short the Tribunal)

7. The claimant/respondents filed a claim petition u/s 166 of the Act, claiming compensation on account of death of Rajan Saini in a motor vehicular accident, which occurred on 18/19.04.2006 due to rash and negligent driving of vehicle No. HR-51B-6126. Vehicle was owned by respondent No. 2 and insured with the appellant.

8. Facts pleaded were that on 18/19.04.2009 Rajan Saini and Monu had gone to attend a marriage, on Motor-cycle No. HR36E-4574 from Rewari to Behrod. At about 1 AM, when they reached near Delhi Darbar Hotel, then the offending Maruti Car driven by Munshi Khan in a rash and negligent manner hit the motor-cycle, from the left side in which Rajan Saini and Monu were seriously injured. Rajan Saini succumbed to his injures at the spot. A case bearing FIR No. 79 dated 19.4.2006 under Sections 279/304-A IPC, was registered at Police Station Shahjapur, against respondent No. 1.

9. Claim petition was contested, wherein the averments made in the claim petition were denied. It was pleaded that if the learned Tribunal comes to the conclusion, that the accident was caused by the rash and negligent driving of offending vehicle No. HR 51B-6126, then respondent No. 4 was to pay the compensation, as the vehicle was insured.

10. Respondents No. 1 and 3 were proceeded against ex parte.

11. Respondent No. 6 appeared, and made a statement that he had no concern with the claim petition. Respondent, No. 5 was also proceeded against ex parte.

12. The appellant denied the accident, and also pleaded that respondent No. 1 did not have a valid and effective driving licence, at the time of accident, and further, had violated the terms and conditions of the insurance policy.

13. On the pleadings of the parties learned Tribunal framed the following issues:

1. Whether the accident in question took place on 18/19.04.2006 due to rash and negligent driving of the offending vehicle bearing registration No. HR51B-6126 on the part of respondent No. 1 resulting into death of Rajan? OPP

2. If issue No. 1 is proved, what amount of compensation, the petitioners are entitled to and from whom? OPP

3. Whether the respondent No. 1 was not holding the valid and effective driving licence on the date of accident? OPR

4. Relief.

14. Learned Counsel appearing on behalf of appellant challenged the findings on issue No. 1, wherein learned Tribunal held that the accident in question, had taken place on 18/19.04.2006 due to rash and negligent driving of offending vehicle bearing registration No. HR51B-6126, driven by respondent No. 1. This resulted in death of Rajan Saini. Learned Tribunal in support of the finding placed reliance on the evidence of claimant/PW5, who had supported the averments made in the claim petition by filing affidavit Ex.PW 5/A. It was also deposed in the affidavit, that FIR No. 79 dated 19.4.2006 under Sections 279/304-A IPC was registered at Police Station Shahjapur (Rajasthan).

15. Evidence was also led by way of Ex.P.1, i.e. Post Mortem Report of the deceased Rajan Saini showing that he had died in a motor vehicular accident.

16. Charge-sheet was duly exhibited as Ex.P.4, vide which charges were framed against respondent No. 1. It was further proved that respondent No. 1, was arrested on the basis of the statement of Monu pillion rider of motor-cycle. The learned Tribunal placed reliance on the judgment of this Court in the case of Gurdeep Kaur v. Tarsem Singh 2008 (2) RCR (Civil) 774 to record a finding on issue No. 1, in favour of the claimants.

17. Ms. Radhika Suri, learned Counsel for the appellant, challenged the findings on issue No. 1, by contending that the claimants had failed to prove the negligence of the driver of the offending vehicle, as no evidence was led, to prove the negligence. The contention of the learned Counsel for the appellant was, that PW 5 in cross-examination had admitted, that she was not present at the time of accident. The contents of the FIR were also not proved as the eye witnesses were not examined to prove the allegations. The contention of the learned Counsel for the appellant, further was that the learned Tribunal wrongly placed reliance, on the judgment of this Court in the case of Gurdeep Kaur v. Tarsem Singh (supra) to hold that registration of FIR itself was sufficient to prove the factum of

negligence. She referred to para No. 12 of the judgment, to contend that in fact in the judgment, this Court was pleased to lay down that the statement of witnesses before a Tribunal constitutes substantive evidence, whereas the statement made in FIR, is not a substantive evidence, but it can only be used for the purpose of contradiction or corroboration of the substantive evidence.

18. The learned Counsel contended that as per the principles of law, FIR cannot be a substitute for the evidence to prove exhaustive version of the occurrence, as the statements before the Tribunal are made on solemn affirmation, whereas FIR is not lodged on solemn affirmation.

19. The contention of the learned Counsel for the appellant was that in the absence of any independent evidence, mere lodging of FIR could not be a proof of negligence as held by the learned Tribunal.

20. Learned Counsel for the appellant, thereafter placed reliance on the judgment of Hon"ble Supreme Court, in the case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, to contend that insurer is to be liable to reimburse, the insured on proof of rashness and negligence on the part of the driver of the vehicle is insured. This is sine qua non for maintaining an application u/s 166 of the Act.

21. She referred to the judgment of Hon"ble Supreme Court in the case of Insurance Company Limited v. Premlata Shukla and Ors. (supra), wherein it is observed that registration of FIR, cannot ipso facto prove the contents thereof.

22. The contention, therefore was that in the absence of proof of negligence, before the learned Tribunal the findings of learned Tribunal are to be treated to be perverse, therefore, liable to be reversed.

23. On consideration, I find no force in the contentions raised by the learned Counsel for the appellant.

24. Learned Tribunal in order to arrive at the finding, that the accident had occurred due to rash and negligent driving of respondent No. 1, did not base its finding on FIR alone, but also took note of the affidavit of PW 5, wherein the factum of accident as mentioned in claim petition was supported. This evidence was corroborated by Ex.P.1, Post Mortem Report showing that the deceased had died in motor vehicular accident. Copy of the charge-sheet framed against respondent No. 1, was duly exhibited as ExP.4. Once the documents were duly exhibited, it could always be used to corroborate oral statement made by PW 5, in support of the accident, specially when challan was presented on the statement of Monu, the pillion rider. It cannot, therefore, be said that there was no evidence except the FIR.

25. Learned Tribunal held, that trial of the driver is prima facie proof of rash and negligent driving by the offending vehicle. It is well settled law that the civil courts/Tribunals have to

decide the cases on the probabilities, on the basis evidence i.e. oral and documentary. The evidence in the case was sufficient, to reach to a conclusion, that the accident had occurred due to rash and negligent driving of respondent No. 1.

26. Findings of the learned Tribunal, therefore, cannot be said to be perverse or outcome of misreading of evidence, nor the judgment of Hon''ble Supreme Court in the case of Insurance Company Limited v. Premlata Shukla and Ors. (supra) can advance the case of the appellant, as it is not applicable to the facts of the case.

27. For the reasons stated, findings on issue No. 1 are affirmed.

28. No other finding was challenged.

29. For the reasons stated above, finding no merit in this appeal, it is ordered to be dismissed on merit as well as being barred by limitation.