(2013) 08 AHC CK 0219

Allahabad High Court

Case No: First Appeal From Order No. 1963 of 2003

Masood Ahmad and Another		APPELLANT
	Vs	
Sardar Jaswant Singh Batra and Another		RESPONDENT

Date of Decision: Aug. 7, 2013

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 163A, 166, 95(1)(b)(i), 96(2)(b)(ii)

Citation: (2014) 1 ACC 232 : (2014) ACJ 2129 : (2013) 7 ADJ 476 : (2014) 1 ALJ 215 : (2013) 100 ALR 512

Hon'ble Judges: Vipin Sinha, J; Prakash Krishna, J

Bench: Division Bench

Advocate: H.P. Dubey, for the Appellant; V.C. Dixit, Archna Tyagi and P. Tyagi, for the Respondent

Final Decision: Allowed

Judgement

Vipin Sinha, J.

The present First Appeal From Order has been filed against the judgement and order dated 30.4.1997 passed by Sri B.B. Roy, II Additional District Judge, Saharanpur (Acting as Motor Accidents Claims Tribunal) in Accident Claim No. 108 of 1996 which was heard and disposed off by the aforesaid judgement and order. The relief sought by this appeal is that this Court may be pleased to allow the appeal and set aside the judgement and order dated 30.4.1997 passed by II Additional District Judge, Saharanpur (Acting as Motor Accidents Claims Tribunal).

2. Heard learned counsel for the parties.

3. The facts in brief of this case are that; on 13.7.1995, the son of appellants was sitting in a Bus No. U.P.-HA-7950 which was about to commence its journey from Gangoh. However, at about 08.00 A.M., a bomb blast took place inside the bus as a result of which, a number of persons who were sitting in the bus alongwith the son

of appellants got injured and ultimately succumbed to injuries.

4. There is no dispute regarding the date or time or place of occurrence and there is also no dispute that there was a bomb blast on 13.7.1995 while the bus was standing at Gangoh in preparation for its onward journey. On account of the said accident, a number of persons had received injuries and some also died. A number of claim cases were filed before the Motor Accident Claims Tribunal. The same being Claim Petition Nos. 128 of 1995, 129 of 1995, 130 of 1995, 1 of 1996, 42 of 1996 and 108 of 1996.

5. However, as far as the present appeal is concerned, it arises out of Motor Accident Claims Petition No. 108 of 1996.

6. A perusal of the record also shows that all the claim petitions were clubbed together and were decided jointly by a common order dated 30.4.1997.

7. It is an admitted position on record that no written statement was filed by either of the opposite parties in Claim Petition No. 108 of 1996 which was preferred by the appellants.

8. The claim petition filed by the appellants was u/s 163A /166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The Claims Tribunal vide its impugned order had though awarded interim compensation to other claimants for a sum of Rs. 50,000/- u/s 140 of the Act however, did not grant any interim compensation to the appellants on the ground that they had not sought any compensation u/s 140 of the Act.

9. However, the Tribunal after going through the evidence on record and various judgments as mentioned in the order itself, came to the conclusion that the claim itself is not maintainable and accordingly, the Claim Petition No. 108 of 1996 was dismissed as not maintainable.

10. Aggrieved against which, the present first appeal has been filed before this Court.

11. The main contention of the learned counsel for the appellants is that the Tribunal has erred in law in rejecting the claim preferred by the appellants holding that the same was not maintainable.

12. Learned counsel for the respondents on the other hand submits that the tribunal was quite justified in rejecting the Claim Petition No. 108 of 1996 alongwith other claim petitions on the ground of maintainability as there was no rash or negligent act on the part of the driver of the Bus.

13. It was also contended by learned counsel for the respondent that the claim petition could not have been filed by the appellants simultaneously u/s 163A /166 of the Act and also i.e. Saharanpur not being a terrorist affected or disturbed area and as such no benefit can be claimed merely because a bomb explosion had taken

place in the bus which was standing at Gangoh.

14. A number of case law have been cited at the bar. Sri V.C. Dixit has referred few High Court judgments but we are noticing Apex Court''s precedents only.

15. After due consideration of the relevant case law on the point, the position which crystallizes is herein as under (with due reference to the citation and the relevant extract):

(A) Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, .

16. There was a collision between a petrol tanker and a truck due to which the petrol tanker went off the road and fell at a distance of about 20 feet from the highway leading to leakage of petrol which collected nearby. Later an explosion took place in the petrol tanker resulting in fire. Number of persons who assembled near the petrol tanker sustained burn injuries and few of them succumbed to the injuries. The victims filed the claim petitions which were dismissed by the Claims Tribunal on the ground that the explosion and the fire had no connection with the accident, and was altogether an independent accident. The appeal was allowed by the learned Single Judge of the High Court holding that the explosion was a direct consequence of the accident. The Division Bench of the High Court affirmed the findings of the learned Single Judge against which the matter came up before the Hon''ble Supreme Court.

17. The Hon''ble Supreme Court dismissed the SLP holding that the explosion and fire resulting in the injuries and death was due to the accident arising out of the use of the motor vehicle. The findings of the Hon''ble Supreme Court are reproduced herein under:

25. These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the above mentioned decisions, the Appellate Bench of the High Court had held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present. case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.

35. This would show that as compared to the expression "caused by" the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A of the Act, Parliament, however, chose to use the expression "arising out of which indicates that for the purpose of awarding compensation u/s 92A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92A enlarges the field of protection made available to the victims of accident and is in consonance with the beneficial object underlying the enactment.

36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no Causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461.

(B) Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, .

18. The deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the rickshaw claimed compensation from the insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the heirs of the deceased would be entitled to compensation. The question as to

whether the case of murder would be covered was also gone into. Paras 9 and 10 are relevant and are quoted below:

9. A conjoint reading of the above two sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words death due to accident arising out of the use of motor vehicle.

10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

(C) Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., .

19. The Apex Court upheld the claim for compensation in respect of injuries were suffered by the claimant due to bomb blast inside the vehicle relying on the decision given in Shivaji Dayanu Patil''s case (Supra).

(D) Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, .

20. The Hon''ble Supreme Court held that the principle of strict liability propounded in Rylands v. Fletcher, 1 1861 All ER 1, was applicable in claims for compensation made in respect of motor accidents. The relevant findings of the Hon''ble Supreme Court are reproduced hereunder:

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens 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? This question depends upon how far the Rule in Rylands v. Fletcher (supra) can

apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima fade answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

19. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands v. Fletcher, can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

20. No Fault Liability envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under no fault liability can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

(E) National Insurance Co. Ltd. Vs. Shiv Dutt Sharma, .

21. Two sets of claims were made in this case; one relating to the accident in a bus and the other relating to an accident where bullets of terrorists killed the passengers of a bus. The Jammu and Kashmir High Court held as under:

43. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

(i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam Mare and the latter decisions noticed above;

(ii) That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed

compensation in Shavaji Dayanu Patil v. Vatschala Uttam Mor. Therefore, merely because some of the victims were taken out of the bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained.

9. Following the aforesaid judgments, it is held that the accident in question arose out of the use of the motor vehicle and, therefore, the claimants are entitled to compensation u/s 163-A of the Motor Vehicle Act.

22. Thus in view of aforesaid facts and circumstances of the case and in view of the law as laid down by the Hon''ble Apex Court, it can be clearly held that "claimant shall be entitled to compensation from Insurance Company if it is proved that accident of deceased arose out of use of motor vehicle."

23. Reference may also be made to the judgement of Delhi High Court rendered in the case of D.T.C. and others v. Meena Kumari and another, in MAC. APP. No. 512-13 decided on 3.2.2010 in which the question arose "as to whether D.T.C. is liable to pay compensation for death of Sansar Pal due to a bomb blast in a D.T.C. bus" and it was held that the claimant would be entitled to compensation.

24. This Court is of the view that the claim petition before the Tribunal would be maintainable.

25. Thus, the judgement and order of the Court below dated 30.4.1997 is liable to be set aside. Accordingly, the same is set aside inasmuch as it pertains to Claim Petition No. 108 of 1996. The matter is remitted back to the Tribunal to decide the claim petition on all other issues. It is left open to the parties to raise all issues as they deem fit before the Tribunal including the issue as to whether the claim petition is maintainable u/s 163A /166 simultaneously.

26. The Tribunal after giving opportunity of hearing to both the parties will decide the case preferably within a period of six months from today keeping in view the fact that the appellant at present is a very senior citizen and aged about 77 years.

27. The appeal is allowed and as indicated above is restored to the Tribunal to re-decide the Claim Petition No. 108 of 1996 afresh. No order as to costs.