(2014) 05 AHC CK 0175

Allahabad High Court

Case No: F.A.F.O. No. 1391 of 2014

Tej Pal Singh		APPELLANT
	Vs	
Premwati		RESPONDENT

Date of Decision: May 8, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163-A, 166, 168, 2(30)

Citation: (2014) 4 ACC 136 : (2014) 6 ALJ 106 : (2014) 105 ALR 892 : (2014) 5 AWC 5262

Hon'ble Judges: Manoj Misra, J

Bench: Single Bench

Advocate: A.K. Srivastava, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Manoj Misra, J.

Heard Sri A.K. Srivastava, learned Counsel for the appellant. The present appeal has been filed against the judgment and award dated 28.3.2014 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 1, Budaun in M.A.C.P. No. 30 of 2013 by which compensation of Rs. 3,04,000/-, with interest at the rate of 6% from the date of presentation of claim petition, has been awarded as against the appellant (the owner and driver of the tractor No. U.P. 24 J 5487).

2. A claim petition, u/s 166 of the Motor Vehicles Act, was filed against the appellant alleging that on 19.1.2013 when Rajesh Kumar (the husband of the claimant-respondent No. 1) was going on a bicycle, the offending vehicle being driven in a rash and negligent manner hit Rajesh Kumar thereby causing him serious injuries to which he later succumbed in the hospital. It was claimed that the deceased was aged 48 years and was having his own business, from which he was able to earn 10,000/- per month. A compensation of Rs. 15,55,000/- was claimed. There were as many as five claimants (dependents of the deceased) including the

widow of the deceased.

3. The claim petition was contested by the appellant denying that the accident was on account of the involvement of the tractor. It was claimed that on account of suspicion only the First Information Report was lodged. It was claimed that some other tractor had caused the accident and when the appellant''s tractor reached the spot people falsely implicated the appellant.

4. The Tribunal framed various issues. Issue No. 1 was to the effect as to whether the accident occurred on account of rash and negligent driving of the appellant. To prove the said issue, copy of the First Information Report; the charge-sheet laid by the police, implicating the appellant; the site plan prepared by the police during investigation; and two witnesses namely, P.W. 1 (Premwati), who is the claimant-respondent No. 1, and P.W. 2 (Bhuvnesh) were examined. P.W. 1 was not an eye witness to the accident, therefore, the Tribunal considered the statement of P.W. 2 (Bhuvnesh), who was an eye witness to the incident. Bhuvnesh in his testimony disclosed that the accident occurred on account of rash and negligent driving of the tractor. The charge-sheet also disclosed that the accident occurred on account of rash and negligent driving of the tractor driver, which resulted in the death of the husband of the claimant-respondent No. 1. The Tribunal after considering the entire evidence including the site plan and the circumstance that the tractor was abandoned on spot, after accident, and was seized by the police only to be later released by order of the Court, recorded a finding that the accident occurred on account of rash and negligent driving of the tractor owned and driven by the appellant. The Tribunal further found that the tractor was not insured with any insurance company on the date of the accident, therefore, the liability was of the appellant.

5. While assessing the compensation payable to the claimant-respondents, the Tribunal determined the age of the deceased to be 50 years. In absence of there being any documentary evidence to prove that the deceased was having an income of Rs. 10,000/- per month, as claimed by the claimants, the Tribunal assessed the income of the deceased at Rs. 3,000/- per month and, accordingly, assessed the annual income of the deceased at Rs. 36,000/- p.a. Having found that there were more than 4 persons dependent on the deceased, it deducted one fourth of the annual income for personal expenses of the deceased to arrive at a multiplicand of Rs. 27,000/-. Considering the age of the deceased to be 50 years, a multiplier of 11 was applied so as to arrive at a figure of Rs. 2,97,000/- towards loss of dependency. To the said amount, Rs. 5,000/- was added towards loss of consortium; Rs. 2,000/- towards funeral expenses and, as such, a total sum of Rs. 3,04,000/- was found payable as compensation to the claimant-respondents.

6. Assailing the award passed by the Tribunal, the learned Counsel for the appellant submitted that the vehicle involved in the accident was hypothecated with Punjab National Bank, which was duly noted in the certificate of registration of the vehicle,

therefore, the bank would be deemed owner of the vehicle and, as such, liability could not have been fastened on the appellant. It has been submitted that the Punjab National Bank had taken the responsibility to get the vehicle insured from time to time under the terms of the loan agreement and since it had failed in its responsibility, the Bank ought to have been impleaded as the opposite party to the claim petition and liability ought to have been fastened on the Bank. It has also been submitted that the Bank had even deducted the premium from the account maintained by the appellant and, therefore, if the bank had failed to get the vehicle insured, the responsibility is entirely of the bank and no award ought to have been passed against the appellant. It was submitted that in such circumstances, the Bank was a necessary party, in whose absence the entire proceeding stood vitiated. An application has also been made to implead the Bank as a respondent in this appeal.

7. In addition to above, it was submitted that before the Tribunal no documentary evidence was produced to show that the deceased at the time of his death was gainfully engaged in any business or in any employment, therefore, notional income of the deceased ought to have been assessed at the rate of Rs. 15,000/- per annum and not at the rate of Rs. 36,000/- per annum as has been assumed while determining the compensation.

8. I have considered the submissions of the learned Counsel for the appellant and perused the record.

9. The submission of the learned Counsel for the appellant that as the vehicle was hypothecated with the bank, therefore, liability ought to have been fastened on the bank, cannot be accepted in view of section 2(30) of the Motor Vehicles Act, which provides as follows:

"Owner means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

10. A bare perusal of section 2(30) of the Motor Vehicles Act would go to show that the owner would be a person in whose name a motor vehicle stands registered. No doubt, if under an agreement of hypothecation, the person in whose favour the vehicle is hypothecated is in possession then he can be taken to be an owner of the vehicle. But, in the instant case, it is not the case of the appellant that though the appellant was registered as owner but the possession of the vehicle was with the Bank under the hypothecation agreement. In fact, it has come in the judgment that the vehicle was seized pursuant to the accident and, thereafter, it was released in favour of the appellant through Court. This observation of the Tribunal has not been challenged as incorrect or contrary to the record. It is thus established that the vehicle was not only registered in the name of the appellant but was also in

appellant''s possession and, therefore, being the registered owner, the appellant was liable for payment of compensation as owner thereof.

11. The other submission of the learned Counsel for the appellant that the bank ought to have been made a party to the proceedings and recovery ought to have been made from the bank, in view of the agreement that it would keep the vehicle insured, also cannot be accepted, inasmuch as, under sub section (1) of section 168 of the Motor Vehicles Act, the Claims Tribunal is required to fasten liability on the insurer or owner or driver of the vehicle involved in the accident or on all or any of them, as the case may be. As, admittedly, the vehicle was not insured on the date of the accident liability could not have been fastened on the insurance company. So far as the Bank is concerned it was not the owner within the meaning of section 2(30), as discussed above, therefore, no liability could have been fastened on it by the Tribunal and as such it was not a necessary party in the claim proceedings. More so, the claim of the appellant, if any, against the bank is based on a separate cause of action that is, breach of contract or understanding, as the case may be, which cannot be adjudicated in proceedings u/s 166 of the Motor Vehicles Act. It is always open to the appellant to take recourse to such remedies against the Bank, as he may be advised.

12. The submission of the learned Counsel for the appellant that the Tribunal ought not to have taken the notional income at ? 36,000/- p.a., inasmuch as, under the second schedule where no income is proved, then notional income should be taken at Rs. 15,000/- p.a., is worthy of rejection on two counts. First, is that the table given in the second schedule was notified in the year 1994 and, as per sub section (3) of section 163-A, it was required to be revised from time to time. In the case of Kishan Gopal and Another Vs. Lala and Others, the Apex Court took the notional income at Rs. 30,000/- p.a. in respect of a child of 10 years, who died in an accident on 19.7.1992, and while doing so it observed that since 1994 the rupee value has highly depreciated. The second reason for rejecting the above submission is that the claim was u/s 166 of the Motor Vehicles Act and, therefore, the Tribunal was within its jurisdiction to assess the income of the deceased without depending on the structured formula. The Tribunal has assessed the income at Rs. 3,000/- per month as being the minimum which an unskilled person would, in ordinary course, generate from his efforts. While holding as above, the Tribunal has placed reliance on a decision of the Apex Court in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, I do not find any good reason to interfere with such assessment of the Tribunal.

13. At this stage, the learned Counsel for the appellant submitted that it was not proved on record that the tractor was being driven in a rash and negligent manner, inasmuch as, in the FIR it was not mentioned that the incident was witnessed by P.W. 2 (Bhuvnesh), who was examined as an eye witness to the incident. It has been submitted that his testimony therefore lacks credibility.

14. The aforesaid submission of the learned Counsel for the appellant cannot be accepted, inasmuch as, no law requires that the names of witnesses be disclosed in the First Information Report. More over, for a claim to succeed under the Motor Vehicles Act, the stringent tests laid down for assessing evidence, as in a criminal trial, are not to be applied. Even otherwise, the Tribunal has considered this argument and has rejected the same by placing reliance on a decision of the Apex Court in the case of Kusum Lata and Others Vs. Satbir and Others, In that case, in claim proceedings, testimony of a witness was discarded by the Tribunal and the High Court on ground that his name was not mentioned in the FIR. The Apex Court did not approve of such an approach and set aside the orders of the Courts below and decreed the claim.

15. In the instant case, the witness (P.W. 2) clearly deposed that he was present on the seen of occurrence. The circumstances also suggested that the tractor was involved in the accident, inasmuch as, the tractor was abandoned on spot and was seized by the police and, thereafter, it was released by order of the Court. The driver of the Tractor namely, the appellant was charge-sheeted for prosecution. Accordingly, from a conspectus of the evidence on record, the finding returned by the Tribunal that the Tractor was being driven in a rash and negligent manner cannot be faulted.

16. No other point has been pressed.

17. In view of the discussion made above, and considering the well reasoned findings recorded by the Tribunal on various issues which could not be demonstrated to be erroneous, I do not find any good reason to entertain the appeal. The appeal is dismissed summarily. The amount of Rs. 25,000/- deposited by the appellant will be remitted to the Tribunal and would be adjusted against the amount required to be deposited under the impugned award.