(2014) 08 DEL CK 0227

Delhi High Court

Case No: MAC. App. 148/2008 & CM 3419/2008

Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Lakshmi Garg	RESPONDENT

Date of Decision: Aug. 6, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304A

Hon'ble Judges: Jayant Nath, J

Bench: Single Bench

Advocate: Neerja Sachdeva, Advocate for the Appellant; Ritu Singh Mann, Dheeraj Garg, Varun Jain and H.G.R. Khattar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Jayant Nath,J.

1. The present appeal is filed by the Insurance Company challenging the Award dated 07.12.2007 passed by the Tribunal.

2. The brief facts are that the deceased Sh. Yogesh Kumar Garg, a Junior Engineer in DDA was, on 12.05.1999, riding his scooter on Ring Road near Sarai Kale Khan, New Delhi when a bus, said to be driven by respondent No.5 in a rash and negligent manner, hit his scooter as a result of which the deceased sustained fatal injuries.

3. None appeared for the owner and the driver and hence they were proceeded ex parte.

4. On the pleadings of the parties, following issues were framed:-

"i) Whether Sh. Yogesh Kumar Garg suffered fatal injuries in an accident that took place on 12.5.99 due to rash and negligent driving of Bus No.DL-1P-A-2359 by R3, owned by R2 and insured with R1? . OPP

ii) Whether R1 insurance company is not liable for compensation on account of preliminary objections taken by it in its written statement? OPR3

iii) Whether the petitioners are entitled for compensation, if so, to what amount and from whom? .....OPP iv) Relief."

5. Respondent No.1 appeared as PW1 while Shri Jugal Kishore appeared as PW2 and Shri Ashok Warshney appeared as PW3. The appellant- Insurance Company produced RW1 Shri Anand Nirmal; RW2 Shri Kishan Singh; R1W1 Shri Ram Dev Gupta owner of the vehicle; R1W2 Shri Surender Kumar and R1W3 Shri Shanti Prakash the driver in evidence.

6. The Tribunal was of the opinion that the claimants namely respondents No.1 to 3 had proved their case and the accident took place due to rash and negligent driving by respondent No.5. A total compensation of Rs.15,84,000/- (Rupees fifteen lac and eighty four thousand) was awarded to respondents No. 1 to 3.

7. Learned counsel appearing for the appellant has strenuously urged that there is no evidence on record to show that the accident was caused by the rash and negligent driving of the driver-respondent No.5; for that matter, even by the vehicle owned by respondent No.4 which is the subject matter of the insurance policy. It is urged that the Tribunal has reached the conclusion of rash and negligent driving by driver-respondent No.5 based on the evidence of an alleged eye witness PW2 Shri Jugal Kishore. It is urged that the said Shri Jugal Kishore had also deposed in the criminal case that was filed against the driver-respondent No.5 under Sections 279/304A IPC where he had said that the scooter driven by the deceased hit the bus and the driver of the bus was not driving in a rash or negligent manner. She submits that this is directly in contrast to his testimony before the Tribunal where he has said that the driver Sh. Shanti Prakash-respondent No.5 was driving rashly and negligently and hit the scooter driven by the deceased from behind and due to this impact, the deceased fell down and sustained injuries. She submits that the appellant had also moved an application for recalling eye witness Sh. Jugal Kishore but the same was erroneously dismissed by the Tribunal on 19.11.2007. She further submits that apart from the evidence of Shri Jugal Kishore, there is nothing on record to show that the vehicle was driven in a rash or negligent manner by driver-respondent No.5. She further stresses that in the criminal case, the said driver has been acquitted.

8. Learned counsel appearing for respondents No.4 and 5 has supported the case of the appellant. He submits that no accident took place with the vehicle owned by respondent No.4 and driven by respondent No.5 on 12.05.1999. He, in fact, submits that the said PW2 Sh. Jugal Kishore wrongly stated in his evidence that the vehicle was impounded in his presence by the police on 12.05.1999. He submits that it is on record from the evidence that though the accident took place on 12.05.1999, the vehicle was actually impounded on 16.05.1999 and the driver-respondent No.5 was

also arrested on the said date. He also stresses on the fact that in the criminal complaint, accused respondent No.5, the driver was acquitted.

9. Learned counsel appearing for the respondent Nos.1 to 3 has stressed that the Tribunal has to draw inference on the facts based on preponderance of probability. Rules of evidence as applicable to criminal trial would not be applicable to the Tribunal. Hence, merely because the criminal court has acquitted respondent No.5 would be no basis to accept the findings recorded by the criminal court. She further urges that acquittal of respondent No.5 by the criminal court is essentially on benefit of doubt to the accused as the prosecution was not able to lead sufficient evidence. She further submits that the Tribunal rightly dismissed the application of the appellant for re- summoning of Shri Jugal Kishore as the application was filed after all the evidence has been led when the matter was ripe for final arguments.

10. I will first deal with the issue about the dismissal of the application of the appellant for recall of Shri Jugal Kishore PW-2. The order dated 19.11.2007 dismissing the application notes that the said witness Sh. Jugal Kishore PW2 appeared in the witness box on 04.07.2005. The Tribunal further held that the application has been moved at the later stage when the matter is ripe for final arguments. The Tribunal further held that PW2 in his cross examination specifically stated that his statement was recorded in the criminal case yet the counsel for the appellant did not confront his witness with the statement recorded in the criminal court. On this ground, the application has been dismissed.

11. In my view, there is no reason to interfere with the said well-reasoned order of the Tribunal. The appellant cannot be permitted to delay the proceedings at the time of final arguments in this manner and improve upon their case. There is no explanation why PW-2 was not confronted with his testimony when his evidence was recorded on 04.07.2005. It is only when the driver was acquitted that the Appellant has woken up. The claim petition had been pending since July 1999. Now in November 2007, to further delay the matter was clearly not permissible.

12. On the findings recorded on Issue No.1, in my view the Tribunal was justified in recording the finding that the vehicle was driven rashly and negligently by respondent No.5.

13. The said Shri Jugal Kishore has in his cross examination by respondents, deposed as follows:-

".... I saw that a Two Wheeler Scooter, bearing No. DL 4SA- 2860 driven by ''Yogesh'' deceased was going ahead of my Van, all of a sudden a Bus bearing No. DL 1PB-2359 came at a very fast speed of 70 K.M. per Hour and driven by the driver Shanti Prakash rashly and negligently and hit the scooter of Yogesh Kumar from behind and due to this impact Yogesh Kumar fell down from his Scooter and sustained injuries on chest the driver also stop the Bus whose name was Shanti Prakash but after seeing the condition of deceased ran away alongwith the Bus....."

14. He is the only witness to the accident. It is not possible to believe that he is a planted witness as he has taken the deceased from the accident site to Jeevan Nursing Home, then to his house in Mayur Vihar Phase-I and then to Walia Nursing Home, Laxmi Nagar, Delhi.

15. It is no doubt true that it was for the claimants to prove that the accident took place due to the rash and negligent driving of the driver of the offending vehicle. They have discharged this onus by producing an eye witness PW-2 Jugal Kishore who categorically states that the bus/offending vehicle was being rashly and negligent driven at the time of the accident. Hence they discharged their onus. Had this witness been confronted with his evidence in the criminal case, possibly the claimants may have taken steps to produce other evidence. As there was no challenge to this evidence, they took no steps to bring other evidence.

16. However we may look at some other aspects of the matter. The said PW-2 Sh.Jugal Kishore in the criminal case has given his evidence as follows:-

".... The car driver blown the horn to take side from one to two wheeler scooter. The Car took over scooter and the scooter hit the bus. The Scooter no. and the bus no. I do not know. The scooter driver fell down after the accident. I do not know due to whose fault the accident has taken place.

x x x

It is correct that bus no. DL1P-A-2359 was going ahead my car. I cannot say whether the number of Scooter was DL 5SA-2860. It is wrong to suggest that the Bus driver was driving the bus in rash and negligent (sic) manner. It is also wrong to suggest that the bus has hit the scooter by back side. I do not know who was driving the bus.

x x x

It is correct that I did not noted and hence I do not know the number of the bus under which the victim/scooterist (sic) was hit." He admits in his evidence in the criminal case that the offending vehicle was being driven ahead of him.

He admits that the accident has taken place between the scooter and the offending vehicle. Based on his above testimony in the criminal case, the evidence given by him before the Tribunal cannot be discarded. There is no reason to discard the said evidence.

17. Further the other aspect is that the bus was on contract with Delhi Transport Corporation, a Government undertaking. The driver is not an employee of the said Corporation but the conductor is an employee of the said Corporation. He was the most appropriate witness to testify. However, the appellants or respondents No.4 and 5 never chose to summon him to give evidence. He would have been an independent witness.

18. The Supreme Court in the case of N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, held as follows:-

3. ... This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes...."

19. As far as acquittal of the driver of the offending vehicle is concerned in the criminal trial, that would be of no consequence regarding the findings recorded by the Tribunal in the present claim petition. The said order of Ms.Ravinder Bedi, MM dated 25.04.2007 status that the prosecution has failed to prove the case of bringing home the guilt of the accused. It further notes that the court has no option left but to acquit the accused by giving benefit of doubt to him. There is no finding of fact recorded in the said order which can be said to be contrary to the findings of fact arrived at by the Tribunal in the present case.

20. Even otherwise there can always be a different view taken by a criminal court and a civil court. Reference in this context may be had to the judgment of the Supreme Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, .

32. ....Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein....."

21. In view of the above, I see no reason to interfere with the findings recorded by the Tribunal regarding the cause of the accident being rash and negligent driving of the driver of the vehicle. The appeal is dismissed.

22. As per the order dated 07.03.2008, the entire awarded amount with interest was directed to be deposited with the Registrar General of this Court. On 25.10.2013, 50% of the awarded amount with proportionate interest was directed to be released to the claimants. The balance amount i.e. lying with the Registrar General may also be released to the claimants/respondents No.1 to 3 along with accumulated interest, if any.