Bhanwarlal Vs Sardar Kabul Singh and others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Oct. 15, 1988

Acts Referred: Evidence Act, 1872 â€" Section 137

Citation: (1989) MPLJ 16

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Advocate: B.K. Samdani, for the Appellant; Bhasin and A.K. Khan, for the Respondent

Final Decision: Allowed

Judgement

S.K. Dubey, J.

A poor, illiterate and rustic villager has filed this appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short ""the Act""), against the award dated

4th November, 1981, passed in Claim Case No. 33/79, by Shri L.J. Mandlik. Member, Motor Accidents Claims Tribunal, Ujjain, whereby the

claim for compensation for the injuries arising out of the motor accident occurred on 25-1-1979, by the truck No. M.P.M. 3369, owned by the

respondent No. 1, driven by respondent No. 2 and insured by respondent No. 3, has been dismissed.

Brief facts leading to this appeal are : When the claimant-appellant was going on his bicycle the respondent No. 2 came from behind in a high

speed and dashed the cyclist, as a result of which the cyclist fell down and the cycle was crushed. The claimant-appellant received multiple severe

injuries i.e. fracture in his right leg. He remained under plaster for a period of about 6 months. After the removal of the plaster, he became lame and

there is shortening of leg by 3Ã¯Â¿Â½"". Thus, there was permanent disablement in the right leg. It is also alleged that the claimant lodged the report at

4.30 a.m. in the morning in the concerning police station. The claimant submitted an application on 23-7-1979 before the Motor, Accidents Claims

Tribunal, Ujjain, whereby he claimed compensation of Rs. 53,000/- for the injuries received by the use of the motor vehicle. After the notice, the

owner, driver and insurer of the vehicle filed their written statements separately. The main contest of the non-applicants before the Tribunal was

that their truck was not involved in the accident nor it went towards the site or place of the accident but went through some other site. During the

trial, the claimant examined himself as PW-1 and one eye witness PW-2 Balwant. PW-1 in para 1 specifically stated on oath that the truck, which

caused accident and injuries to him was of Sardar Kabulsingh, i.e. the owner of the vehicle, the respondent No. 1. In paras 10, 15 and 18 also the

claimant affirmed on oath that it was the truck No. MPM 3369. During the cross-examination, the respondents confused him in para 18, by asking

questions in respect of his illiteracy and difference in letters and numbers in English and Hindi. The respondents did not put their case in cross-

examination that it was not their truck, which caused injuries to him nor the other witnesses were also examined on the point, that the truck did not

go towards the place of the accident, but went towards some other place. PW-2 Balwant, who is an eye witness also affirmed on oath that it was

the same truck MPM 3369, caused accident, as a result of which the claimant-appellant received injuries. To this witness also, the respondents did

not put their case in the cross-examination, as aforesaid. The claimant-appellant also examined one Head Constable, who proved the First

Information Report (Ex. P-8). To this witness also, there is no cross-examination at all. The respondents have examined the owner Kabulsingh as

DW-1 and Bhagirath DW-2, though this witness in examination-in-chief has denied that no accident was caused by him on 25-1-1979 on

Sanwer-Indore Road but this witness has not proved by any other evidence that his truck though went on trip on 25-1-1979 went to some other

place and not to the site or place of the accident. Except these two witnesses on behalf of the respondents, there is no other evidence to support

the case of the defence.

On the basis of the total evidence, the learned Tribunal held that the claimant has failed to prove the identity of the truck and as such it cannot be

said that the accident occurred with the truck No. MPM 3369, owned by respondent No. 1, driven by respondent No. 2 at the relevant time and

insured by respondent No. 3. The Tribunal determined compensation of Rs. 15,245.85 only for the injuries in the leg. As the respondent was not

held to be liable to make any payment, hence interest was not awarded.

Shri B. K. Samdani, appearing on behalf of the appellant-claimant, contended that the Judges are not the computers and the Courts have to see

the probabilities particularly in Civil Cases. The burden on the claimant is not that of criminal charge. Learned counsel contended that it was the

duty of the respondents to cross-examine the claimant and his witnesses to prove their case, as pleaded, in their written statement but the

respondents have failed to do so. In such circumstances, the tribunal merely on the discrepancy with respect to the number, which has arisen in the

cross-examination and also not mentioning of the number of the vehicle in the F.I.R. was not right in dismissing the claim.

Shri Sudhir Bhasin, learned counsel appearing for the respondents Nos. 1 and 2 and Shri A. H. Khan, learned counsel appearing for respondent

No. 3, contended that the findings of the Tribunal are based on the evidence. The findings are not perverse and the appellate court will be slow to

disturb the findings in the appeal. Learned counsel contended that from the evidence, it is amply proved that the claimant has failed to establish that

the accident occurred with the truck in question and also that at the relevant time of the accident, the respondent No. 2 was driving the truck.

Therefore, the findings of the Tribunal on this issue are not liable to be interfered with.

After hearing the learned counsel for the parties, I am of the opinion that the Tribunal Has in fact misdirected itself on the evidence on record in

holding that the identity of the truck is not established and also that the truck in question was not the same, which dashed against the appellant-

claimant. It is true that the trial Court is the best Judge and its findings on facts should not be lightly interfered with. As alluded from the evidence, it

is clear that the statement on oath corroborated by another independent eye witness Balwant has proved that the accident was caused by the truck

No. MPM 3369, which was being driven by the driver of the owner. On the face of the evidence produced in the case by the parties, the

contention of the learned counsel for the respondents cannot be accepted that because in the FIR the number of the truck has not been mentioned,

as such the liability cannot be fastened on the respondents. It is settled law even in the criminal trials, the FIR is not a substantive piece of evidence,

the object of the FIR is to set the criminal law in motion and after the lodging of the FIR it is the duty of the police to investigate the offence.

Further the FIR can be used either for the purpose of contradicting the lodger of the FIR or for the purpose of corroboration. The FIR is not an

encyclopaedia, where all the details can be given nor it is like a plaint in the civil suit, where the complete case has to be pleaded. When the

claimant and his witness affirmed on oath in examination-in-chief and thereafter there was cross-examination, an illiterate person was made to

confuse with respect to the digits of the number of the vehicle in Hindi and English. The respondents did not dare to cross-examine the claimant

and his witnesses with respect to the identity of the vehicle, i.e. colour, size, shape etc Not only this, the respondents did not put even their case in

cross-examination. For demolishing the case of the claimant, it is incumbent on the part of the respondents to cross-examine the witnesses on the

facts stated in their examination-in-chief and the case of the respondents ought to have been put to them. u/s 137 of the Evidence Act, a stray line

in the cross-examination cannot be read to throw out the case of the claimant. The statement in the examination-in-chief and cross-examination is

to be read together for correct appreciation to find out the truth therefrom. Mere reading one sentence or few sentences of the cross-examination,

completely ignoring the chief portion and other portions of the cross-examination, in my opinion, was very much misleading particularly in case of

motor accident, where the drivers usually after hitting a person run away. From the evidence it does not reason to appeal that only because of

confusion in the digits of vehicle number by a rustic illiterate claimant, the claim petition for compensation for the injuries arising out of the motor

accident should be thrown out. Unless, of course if it is found that the statement of the witnesses suffers from inherent weaknesses which has been

said earlier, I do not find it so. Therefore, it cannot be held that the accident did not occur with the vehicle of the respondents nor the fact of the

accident with the vehicle of the respondents Nos. 1 and 2 was in non-existence, under the particular circumstances and facts of the case.

Therefore, In my opinion, all minor inconsistencies in the evidence of the claimant and by giving an undue weight of non-mentioning of the number

of the vehicle in the FIR by the Tribunal, the Tribunal misdirected itself in holding that the accident did not occur with the vehicle of the respondents

Nos. 1 and 2. The Tribunal further erred in holding that as there are no marks of dents on the truck, as such it cannot be said that the accident

occurred with the said truck. Suffice it to say that it has come in the evidence that the accident occurred by the front wheel of the truck, the

question of dents or discolouring of the portion of the truck may or may not be, which depends on the impact. Merely, on this basis also a claim

case for compensation for injuries, cannot be nullified.

There is another feature in the case that why an illiterate person will involve the respondents in a case if the accident would not have occurred with

the said truck of the respondents Nos. 1 and 2. No enmity or any ulterior motive has been proved nor there is any cross-examination to that effect

on the claimant. In such circumstances, when both the parties led evidence and the burden lost its importance, it was the duty of the respondents to

prove that the accident was not caused by the said truck and according to their plea of alibi, the truck at the relevant time was at some other place

and it could not have been there where the accident occurred. In such circumstances, I am of the view that, the findings of the Tribunal arrived at

with an erroneous approach deserve to be set aside and I hold that it was the truck No. MPM 3369, which was involved in the accident and to

evade the liability, a false defence was raised by the respondents-owner and driver. As the truck dashed against the claimant who was going on his

bicycle on the left side of the road and the claimant fell down on the road as a result of dash, his Cycle was crushed, he received multiple injuries

and the truck did not stop at the site, this also suggests that the truck driver was rash and negligent in the circumstances of the case. Moreover, the

aid of principle of ""res ipsa loquitur"" can also be taken for holding that the truck in question was being driven rashly and negligently causing accident

to the claimant.

Now coming to the question of compensation, learned counsel for the appellant meekly submitted that the compensation deserves to be enhanced.

He could not place any data or any authority that looking to the injuries, compensation awarded as long as back in the year 1979 was too low. In

such circumstances, in appeal when the compensation is neither too low nor is too excessive, the appellate court will not interfere in the award of

the compensation.

Now the question remains for consideration that the Tribunal has not awarded any interest on the amount of compensation. It is the highest judicial

pronouncement that the interest in the claim cases should be awarded at the rate of 12% per annum but looking to the facts and circumstances of

the case, instead of awarding the interest at the rate of 12% p.a., I award the interest at the rate of 9% p.a., from the date of the application till

payment. The respondent No. 3, the National Insurance Company, shall deposit the amount under award of Rs. 15,245.85 with interest at the rate

of 9% p.a. from the date of the application till payment. The amount shall be deposited by the respondent No. 3 within 6 weeks from today. In

case of default, this amount shall carry interest at the rate of 12% p.a. after the expiry of 6 weeks.

The result is this that this appeal is allowed with costs. Counsel''s fee Rs. 500/- if already certified.

At this stage Shri A.H. Khan, learned counsel, made a prayer that for depositing the amount within the time, a certified copy of the judgment be

delivered to the National Insurance Company at an early date. Hence, I order that a certified copy of this judgment shall be given to Shri Khan,

learned counsel, within three days from the date of delivery of this judgment, on payment of necessary charges.