Miscellaneous Appeal No.394/2015

30.07.2015

Shri A.K.Sharma, learned counsel for appellant.

Shri A.K.Dixit, learned counsel for respondents.

Owner and Driver of the offending vehicle has approached this Court vide present Appeal under Section 173(1) of the Motor Vehicles Act, 1988 against the Award dated 10.11.2014 whereby Rs.5,41,000/- has been awarded in lieu of death of one Prabhu Singh who died on 25.10.2011 having run over by offending Tractor bearing registration No.MP 15 AA 7192 while exonerating the Insurance Company from the liability on a finding that the offending vehicle was operated contrary to the insurance policy as the deceased was found sitting on the mud-guard of the offending vehicle from where he fell down and run over.

Appellant takes exception to findings arrived at by the trial Court on the ground of being contrary to evidence led on behalf of applicant/appellant; wherein, the witnesses have stated in clear terms that the deceased was run over by offending vehicle while he was standing by the side of road. It is contended that the Claims Tribunal committed gross error in placing reliance on FIR rather on the statement of PW-2, an eye witness.

The relevant finding recorded by the Claims Tribunal are in paragraphs 12 to 19. In paragraphs 18 and 19 the Claims Tribunal found :

''18. हस्तगत् मामले में आवेदकगण ने प्रथम सूचना रिपोर्ट (प्रदर्श पी–1) को उस बिन्दु तक स्वीकार करने का प्रयास किया है कि अनावेदक क्र.1 के वाहन से घटना दिनांक को प्रभूसींग की दुर्घटना में मृत्यु हुई, किन्तु इस तथ्य को स्वीकार करने से इंकार किया है कि प्रभूसींग उक्त ट्रेक्टर पर बैठा था। ऐसा वह नहीं कर सकते यह तो उस समय ही उन्हें इस रिपोर्ट के संबंध में वरिष्ठ अधिकारियों को शिकायत करनी चाहिए थी और ऐसा न करने से आंशिक रूप से अपने लाभ के लिए आंशिक तथ्य को स्वीकार और आंशिक तथ्य को अस्वीकार नहीं कर सकते उसे दस्तावेज सम्पूर्ण रूप से स्वीकार करना होगा।

19. इस प्रकार (प्रदर्श पी–1) के दस्तावेज से यह प्रमाणित है कि प्रभूसींग प्रश्नगत् वाहन के मडगार्ड पर बैठकर जा रहा था और उससे ही गिरने से उसकी मृत्यु हुई। आवेदकगण और अनावेदकगण क्र1 व 2 का यह कहीं अभिवचन नहीं है कि प्रभूसींग अनावेदक क्र.2 का ड्रायवर या क्लीनर या कंडक्टर है। इससे स्पष्ट है कि प्रभूसींग के वाहन पर बैठने के संबंध में कोई अतिरिक्त प्रीमियम बीमा कम्पनी को अनावेदक क्र.2 द्वारा अदा नहीं किया गया है और उसने वाहन पर सवारी के रूप में प्रभूसींग को बैठाया है जो कि स्पष्ट रूप से बीमा पॉलिसी के शर्तों का उल्लंघन है और प्रीयिम के अभाव में अनावेदक क्र.3 पूर्ण रूप से दायित्व से उन्मोचित होना पायी जाती है।''

That the FIR, reliance whereof has been placed by the Claims Tribunal was lodged by PW-2 namely Bheem Singh. This fact has not been denied by the appellant. It is also not denied that Bheem Singh was an eye witness and

immediately when the accident occurred he had lodged the FIR with the police wherein it is stated :

> ''मैं खेती करता हूॅ। आज दिनांक 25/10/11 को शाम करीब 5 बजे मैं अपनी मोटर साइकिल से पिताजी के साथ देवरी आ रहा था। जैसे ही हम लोग बीना तिगड्डा रजौला पैट्रोल पंप के पास आये। उसी समय देवरी तरफ से मेरे गांव के दिलीप सींग राजपूत का हरे रंग का ट्रेक्टर दिलीप सींग का भाई बबलू सींग ट्रेक्टर को तेज गति एवं लापरवाही पूर्वक चलाता आ रहा था ट्रेक्टर पर मडगाड पर मेरे बड़े पिताजी प्रभुसींग राजपूत(परिहार) एवं पडरही का राजू ठाकुर बैठे थे। पैट्रोल पंप तिगड्डा के पास एकदम मेरे बड़े पिताजी प्रभुसींग गिर गये उपर से ट्रेक्टर निकल गया जो गम्भीर रूप से घायल हो गये। बबलू ट्रेक्टर लेकर गॉव तरफ भाग गया। मैंने और पिताजी ने उन्हें उठाया। ट्रेक्टर का नम्बर नहीं देख पाया। प्रभुसींग को मोटर साइकिल से सरकारी अस्पताल देवरी इलाज कराने लाये। डॉ. ने इलाज करके जिला अस्पताल सागर रिफर कर दिया। हम लोग जीप से सागर ले जा रहे थे। प्रभुसींग रास्ता में खत्म हो गये तो लोटाकर वापिस देवरी ले आये अस्पताल की तरफ जीप में लास रखी है। रिपोर्ट करने आया हूॅ। कार्य0 की जावे।
>
> रिपोर्ट पढ़कर देखी कहे अनुसार लिखी है।''

It is observed that while entering in witness box he gave a different version that the deceased was standing by the road side, however, this witness does not dispute of having lodged the FIR. Though it is contended by learned counsel for appellant that the Claims Tribunal committed gross error in solely relying on the FIR, however, taking into

consideration that the FIR was lodged within a close proximity of the accident having taken place and as witnessed by PW-2 Bheem Singh, the Tribunal is justified in relying upon the same rather a distorted version by him when he entered into the witness box.

In this context reference can be had of a decision in Oriental Insurance Co.Ltd. vs. Premlata Shukla (2007) 3 MPHT 225; wherein, their Lordships were pleased to hold :

> "13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.
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> 14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.
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> 15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the

other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In Hukam Singh (supra), the law was correctly been laid down by the Punjab and Haryana High Court stating;

> "8. Mr. G.C. Mittal, learned counsel for the respondent contended that Ram Partap had produced only his former deposition and gave no evidence in Court which could be considered by the Additional District Judge. I am afraid there is no merit in this contention. The Trial Court had discussed the evidence of Ram Partap in the light of the report Exhibit D.1 produced by him. The Additional District Judge while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of inadmissible evidence either. No doubt the procedure adopted by the trial Court in letting in a certified copy of the previous deposition of Ram Partap made in the criminal proceedings and allowing the same to be proved by Ram Partap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement the parties in order to save time did not object to the previous deposition being proved by Ram Partap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in Court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not

> open to them to urge later either in the same Court or in a court of appeal that the evidence produced was inadmissible. To allow them to do so would indeed be permitting them both to appropriate and reprobate."
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> 16. … ”

In view whereof no indulgence is caused in respect of the conclusion arrived at by the Claims Tribunal that the offending vehicle was being operated in breach of insurance policy.

In the result, Appeal fails and is dismissed. No costs.

(SANJAY YADAV)
JUDGE

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