



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 7881 OF 2024
(Arising out of SLP(C) No(s). 25114 of 2019)

Sajeena Ikhbal & Ors.

... Appellants

Versus

Mini Babu George & Ors.

... Respondents

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. Challenge in this appeal is to the judgment and order dated 23.07.2019 passed by the High Court of Kerala in MACA No. 3331 of 2016 dismissing the appellants' appeal while affirming the Award passed by the Motor Accident Claims Tribunal¹ by

¹ 'MACT'

which the appellants' claim was dismissed. The parties are referred to in this judgment as they appear in the claim petition.

2. The widow, minor child and parents of the deceased Ikhbal are the appellants in the present proceedings. Ikhbal died in an accident on 10.06.2013 being knocked down by a car as he was proceeding in his motorcycle from Thodupuzha to Muttom. He died of the injuries sustained in the said accident which allegedly occurred on account of the negligence of the driver of the car. Respondent nos. 1 to 3 are the owner, driver and insurer of the car respectively. Respondent nos. 2 and 3 contested the claim petition while respondent no. 1 remained ex-parte.

3. According to the appellants, while the deceased was travelling on a motorcycle and reached near 'Mrala' junction, a K.S.R.T.C. bus, which was going in front, stopped at the bus stop. The deceased attempted to overtake the bus and at that time the subject car driven by respondent no. 2 came from the opposite direction and hit at the motorcycle of the deceased on which he fell down and sustained fatal injuries. He was taken to the hospital, but he succumbed to the injuries. The deceased

was an employee as U.D. Clerk in Registration Department and had monthly income of Rs. 21,456/-.

4. Respondent nos. 2 and 3 denied the involvement of the car in the accident. According to them, respondent no. 2 was driving the car carefully and the accident occurred due to the negligence of the deceased because he attempted to overtake the parked K.S.R.T.C. bus. In the process, the motorcycle hit on the bus and the deceased fell down and sustained fatal injuries. The deceased was taken to the hospital by respondent no. 2 who reached the spot soon after the accident. The car of respondent no. 2 did not hit the deceased's motorcycle. The respondent no. 3 admitted the policy.

5. The appellants examined six witnesses before the MACT while the respondents examined two witnesses. Both the parties exhibited number of documents in their evidence. The MACT assessed the compensation to hold that the appellants are entitled to a total compensation of Rs. 46,31,496/-. However, the claim petition was dismissed on the ground that the appellants have failed to prove that the accident occurred due to negligent driving of respondent no. 2/driver, nor it is proved that

the car was involved in the accident. The said findings have been affirmed by the High Court.

6. Mr. Thomas P. Joseph, learned senior counsel for the appellants submits that there is ample evidence demonstrating involvement of the car in the subject accident and the findings to the contrary is utterly perverse. It is argued that the MACT and the High Court as well have recorded the findings adverse to the appellants basing on conjectures and surmises and by complete misreading the evidence. It is vehemently argued that the statement of witnesses have to be read in conjunction with principle of *res ipsa loquitur*, which the courts below have failed. Learned counsel prayed for allowing the appeal to award the sum assessed by the MACT.

7. *Per contra*, Mr. Atul Nanda, learned senior counsel for respondent no. 3 would submit that the courts below have correctly held that the subject car owned by respondent no. 1 was not involved in the accident. Referring to the statement of witnesses, learned senior counsel has argued that none of the witnesses have seen the car hitting the motorcycle driven by the deceased. It is lastly argued that both the courts below have

recorded the findings after careful examination of the evidence which warrants no interference by this Court in exercise of power under Article 136 of the Constitution of India.

8. Before proceeding to dwell on the merits of the matter we remind ourselves that the present is an appeal under Article 136 of the Constitution of India wherein, ordinarily, this Court would not reappreciate the evidence. However, this Court in **Mangla Ram v. Oriental Insurance Co. Ltd. & Ors.**² has held that in an appeal under Article 136 of the Constitution of India, ordinarily this Court will not engage itself in reappreciation of the evidence as such but can certainly examine the evidence on record to consider the challenge to the findings recorded by Tribunal or the High Court, being perverse or replete with error apparent on the face of the record and being manifestly wrong. This being the legal position, we proceed to examine the evidence on record to examine the correctness of the finding recorded by the courts below as to whether the subject car was involved in the accident or not.

² (2018) 5 SCC 656

9. It was the case of the appellants from the inception that the deceased was hit by the subject car which came driven from the opposite direction as a result of which he was thrown on the road and sustained fatal injuries. The final report (closure report) of FIR No. 342 of 2013 records that the damage occurred to the subject car is due to the skied motorcycle glide to the road and hit to the front bumper and grill of the car, which was coming at that time and the accident occurred for which the drivers of the bus or the car were not responsible. However, it clearly records that there was damage to the car on account of the accident.

10. PW-2 in his deposition stated that the accident was a result of collision between the car and the bike. This witness is the driver of the bus. He was sitting on the driver seat and after hearing the sound of the accident, he looked back and saw the deceased was lying on the road. Nearby people told him that the deceased was hit by the car due to over speeding. In cross-examination he denied that the car driver was not involved in the accident.

11. PW-3 is the Teashop owner at the place of occurrence. He says that he heard the sound of accident, and the mudguard of

the car was detached. In cross-examination, he states that as the car hit, the wheel of the bike rotated. He denied the suggestion that the bike touched the bus and fell down or that he has not seen the offence.

12. PW-5 was the SHO of Karimkunnam Police Station who has prepared the Mahazar of the car, bus and the bike. In the Mahazar of the car, it was noted that the paint on the right side of the head light is lost, and scratches are seen here and there on the right side of the body. According to him, the grill of the car is dented, and parking light is broken.

13. PW-6 is an important witness who was presented as an eyewitness to the accident. He had seen the motorcycle overtaking the bus and at that time the car hit the motorcycle. The car forwarded a little and stopped and the injured was taken to the hospital in the same car which hit him. This witness has remained firm in the cross-examination.

14. RW-2 is respondent no. 2 as also the driver of the subject car. He says that the bike skied and fell in front of the car. He admits in cross-examination that when the motorcycle skied and

reached in front of the car, the bus was 100 feet away and he stopped the car on the spot where the bike hit the car.

15. From the above evidence of the witnesses, it is apparent that (I) the car had suffered damages; (II) the car driver admits that the bus was 100 feet away when the motorcycle hit the car; (III) PW-6, an eyewitness, has narrated the accident and (IV) PW-2, the driver of the bus also speaks about hearing the sound of the accident and nearby people telling him that the car had hit the bike.

16. The courts below have recorded the finding of non-involvement of the car in the accident by disbelieving the eyewitness, PW-6 only on the ground that in the police investigation, he was not examined as an eyewitness. In our considered view, a witness who is otherwise found trustworthy cannot be disbelieved, in a motor accident case, only on the ground that the police have not recorded his statement during investigation. There is abundance of evidence pointing to the fact that the car was involved in the accident and the courts below have not considered the evidence in true perspective and have misguided themselves to record perverse finding regarding non-

involvement of the car in the accident. In claim cases, arising out of motor accident, the court has to apply the principles of preponderance of probability and cannot apply the test of proof beyond reasonable doubt. The evidence available in the present case tested on the principles of preponderance of probability can record only one finding that the car was involved in the accident, otherwise, the damage found to the car in the Mahazar (Annexure P-2) was not possible. The Mahazar clearly records that the front bumper right side of the car is broken, front right parking light is broken, the grill fitted above the front bumper is curved. With such damages to the front side of the body of the car, it is impossible to record a finding that the car was not involved in the accident.

17. In the light of the evidence on record, we set aside the finding of the courts below that the car was not involved in the accident, resultantly, holding that the deceased died as a result of accident involving the car insured with respondent no. 3. We, therefore, set aside the judgment and order of the courts below and allow the claim petition to award compensation to the appellants at Rs. 46,31,496/- with interest @ 9% per annum

from the date of filing of the claim petition till the realisation of the payment, which shall be made within three months from today, failing which, the award amount shall carry interest @ 12% per annum.

18. The appeal is allowed accordingly in the above stated terms. The parties shall bear their own costs.

.....J.
(C.T. RAVIKUMAR)

.....J.
(PRASHANT KUMAR MISHRA)

OCTOBER 17, 2024.
NEW DELHI.