

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**FAO No. 884/2003**

Date of decision: 22<sup>nd</sup> May, 2009

SOMARI DEVI & ORS. .... Appellants  
Through : Mr. P.K. Sharma, Adv.

versus

RAGWAR SINGH & ORS. .... Respondents  
Through : Mr. Ram N. Sharma and  
Mr. Abhishek, Adv. for R – 4.

**CORAM :-**

**THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. The appellant has challenged the award of the learned Tribunal whereby the learned Tribunal has dismissed the claim petition filed by the appellants.

2. The accident dated 4<sup>th</sup> January, 1998 resulted in the death of Jokhu Ram. The deceased was a Contractor and was going from Sector-11, Rohini to his house on foot. Two labourers were accompanying the deceased. The deceased was crossing the road near

Lok Nayak Apartments, Sector-7, Rohini, Delhi, when he was hit by truck bearing No.HR-38-BG-6052 coming from Rithala side at a very high speed and being driven in a rash and negligent manner and without blowing the horn. The deceased sustained fatal Injuries on his head and other parts of the body and was initially taken to Hindu Rao Hospital which referred him to Ram Manohar Lohia Hospital where he expired on 5<sup>th</sup> January, 1998.

3. The deceased was survived by his widow, two minor sons aged about 12 and 7 years, a minor daughter aged about 3 years and father who filed the claim petition before the learned Tribunal.

4. The widow of the deceased appeared as PW-1 and deposed that the deceased was a Contractor doing flooring work earning Rs.6,000/- to Rs.7,000/- per month and at the time of the accident, he had a work contract at Sector-7, Rohini. The deceased was 35 years at the time of his death. PW-1 tendered in evidence the chargesheet – Ex.P-1, mechanical inspection report – Ex.P-2, post-mortem report – Ex.P-3, Registration Cover – Ex.P-4, seizure memo of truck – Ex.P-5, FIR – Ex.P-6, seizure memo of driving licence – Ex.P-7, driving licence – Ex.P-8, site

plan – Ex.P-9 and death certificate – Ex.P-10.

5. The appellant produced the eye-witness, PW-2 who deposed that he was accompanying the deceased on 4<sup>th</sup> January, 1998 at about 10:55 pm and while crossing the road near Lok Nayak Apartment, Sector-7, Rohini, the deceased was hit by truck bearing No.HR-38-BG-6052 coming from Rithala side at a very high speed and driven in a rash and negligent manner.

6. The driver of the offending vehicle filed the written statement before the learned Tribunal and denied the involvement of the truck in the accident. The owner of the offending truck did not appear before the learned Tribunal and was proceeded ex-parte. The Insurance Company admitted the factum of insurance of the offending vehicle before the learned Tribunal.

7. The learned Tribunal dismissed the claim petition on the ground that the post-mortem report does not mention that the eye-witness, PW-2 identified the dead body of the deceased. The learned Tribunal further held that the MLC has not been proved by the appellants. It is

further recorded that as per the FIR and chargesheet, no witness was

found on the spot. The learned Tribunal observed that PW-2 has not stated the number of TSR in which he followed the PCR Jeep to the hospital. The name of PW-2 has not been recorded in the FIR. The seizure memo of the truck was prepared one day after the accident by the I.O. As per the chargesheet, R-1 surrendered before the Criminal Court on 19<sup>th</sup> January, 1998 but refused to submit himself to Test Identification Parade. The seizure memo of the truck was not witnessed by PW-2. The learned Tribunal, therefore, gave a finding that PW-2 was not the actual eye-witness of the accident and was brought in as the witness subsequently. The learned Tribunal further observed that neither the identity of the deceased was established nor the identity of the person who was driving the truck has been established and there is no material on record to prove that Jokhu Ram sustained fatal injuries as a result of the accident caused by rash and negligent driving of the truck bearing No.HR-38-BG-6052. The learned Tribunal dismissed the claim petition for all these reasons.

8. The learned Tribunal has utterly failed to discharge the duty

casted by Section 168 of the Motor Vehicles Act. Section 168 provides

that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunal shall follow such summary procedure as it thinks fit subject to the Rules made in that behalf. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rule 118 of Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the claims Tribunal. Rule 118(7) provides that the claims Tribunal may during the course of enquiry visit the site of accident or examine any person likely to be able to give information relevant to the proceedings.

9. The scheme of the Motor Vehicles Act and the Rules is that the Tribunal has to conduct an inquiry into the claim and a summary procedure has to be evolved. The Act as well as Rules nowhere use the word "trial".

10. In the case of **Saramma Scaria Vs. Mathai, 2003 ACJ 213**, the Kerala High Court observed as under:

**"4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims**

lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs' of the deceased. Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In *N.K. V. Brothers (P) Ltd. v. M. Karumai Ammal*, AIR 1980 SC 1354 Supreme Court has reminded the Claim Tribunals stating as follows:

"Road accidents are one of the top killers in our country, specially, when truck and bus drivers operate nocturnally. 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 and 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."

11. In *Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala*, 1999

**ACJ 1129**, the division bench of Gujarat High Court observed as under:

**“The thrust of the attack on judicial values is not so much that judges are consciously prejudiced, but that they are subconsciously influenced by the fact that they come from a narrow social stratum and reflect the values of a minority class. There can be no question but that subconscious influences of this kind do exist, but the submission made here is that the charge is prone to exaggeration.**

**In the first place, if subconscious influences are taken into account, as indeed they should be, then account should be taken of all such influences, including those that tend to counteract and minimize prejudice. One of these is fidelity to rules, principles and doctrines. Even if a judge were to have some prejudice and wants to give effect to it, he has to do so as plausibly as possible within the framework of rules, the leeways of doing so are not unlimited and this does operate as a brake on personal prejudice. It has to be remembered that cases are argued, often with great ingenuity, by counsel, and if one side puts forward an interpretation of a statutory provision or a precedent, which cannot be countered plausibly, the judge has to decide accordingly, however much his own wishes are to the contrary”.**

12. The learned Tribunal could have invoked Section 165 of the

Indian Evidence Act which is reproduced hereunder:-

**“SECTION 165. JUDGE'S POWER TO PUT QUESTIONS  
OR ORDER PRODUCTION –**

**The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:**

**Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:**

**Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted."**

13. This section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at

the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

14. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15. **Mr. Edmund Burke** arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and that duty is to investigate the truth. If no prosecutor appears, the Court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done effectively, and to act his own part in it.

16. In **Bartly vs. State, 55 Nebr 294 : 75 N.W.832 Harrison, C.J.,**

said:

**“It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness”.**

17. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

18. The framers of the Act, in the Report of the Select Committee published on 1<sup>st</sup> July, 1871 along with the Bill settled by them, observed as follows:-

**“Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the**

part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly than he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter.”

19. The Judge contemplated by Section 165 is not a mere umpire at a

wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.

20. The learned Tribunal did not conduct the inquiry as envisaged in Section 168 of the Motor Vehicles Act. Although, the statement of PW-2 as well as the documents – Ex.PW-1 to Ex.PW-10 clearly proved that the deceased died in a road accident arising out of the rash and negligent driving of the vehicle bearing No.HR-38-BG-6052 by its driver, still if the Tribunal had any doubt about the factum of the accident, the Tribunal could have summoned the Investigating Officer and other witnesses recorded in the criminal case. Nothing prevented the Tribunal to summon the Investigating Officer or other witnesses to ascertain the truth but instead of conducting an enquiry, the learned Tribunal passed the order which is based on surmises and conjectures.

The findings of the learned Tribunal are therefore set aside.

21. The learned Tribunal has not computed the compensation. The evidence led by the appellants has been perused and the compensation is computed on the basis of the material on record.

22. The deceased was aged 35 years at the time of the accident as per death certificate – Ex.P-10. The deceased was survived by his widow, two minor sons, one daughter and father at the time of the accident. The deceased was working as a Contractor for doing flooring work. It is alleged that the deceased was earning Rs.6,000/- per month.

However, no document whatsoever has been placed on record to prove the income of the deceased. The income of the deceased is, therefore, taken according to the minimum wages for a skilled worker which was Rs.2,208/- at the time of the accident. Taking notice of the increase in the minimum wages over a period of 10 years due to inflation and price index and following the judgments of this Court in the cases of

**Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182; Lekh Raj vs Suram Singh, 2007 ACJ 2165 and National Insurance Company Limited vs. Renu Devi, III (2008) ACC 134,** the income of the deceased

for computation of compensation is taken to be Rs.3,312/- [(Rs.2,208 +

Rs.2,208 x 2)/2]. 1/4<sup>th</sup> is deducted towards the personal expenses of the deceased and applying the multiplier of 16, the loss of dependency of the appellants is computed to be Rs.4,76,928/-. Rs.10,000/- is awarded for loss of love and affection, Rs.10,000/- for loss of estate, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. The total compensation is computed at Rs.5,11,928/-.

23. The appeal is accordingly allowed and an award of Rs.5,11,928/- along with interest @7.5% per annum from the date of filing of the petition, i.e. 17<sup>th</sup> March, 1998 till realization is passed in favour of the appellants and against respondent No.4.

24. R4W1 is the witness from District Transport Office, Alwar who produced the original register pertaining to the year 1993 containing the entries from 17835 to 18404 and there is no entry in the name of Ragwar Singh. Copy of the extract from the register and the entry of 18<sup>th</sup> November, 1993, has been exhibited as Ex.R4W1/AR. Respondent No.4 produced another witness – R4W2 who proved the notice under Order 12 Rule 8 issued to the driver as well as the owner to produce the driving licence. Respondent No.4 has succeeded in proving that the

photocopy of the driving licence placed on record from the criminal case was fake.

25. Respondent No.4 is, therefore, given the recovery rights to recover the award amount from respondents No.2 after making the payment to the claimants.

26. The learned counsel for the appellant submits that the father of the deceased expired during the pendency of the petition and his share has devolved upon the appellants. The share of the appellants in the award amount shall be as under:-

Appellant No.1	:	60%
Appellants No.2 and 3	:	10% each
Appellant No.4	:	20%

27. The order with respect to the mode of investment shall be passed on the next date of hearing as this Court has directed LIC, SBI and other banks to formulate a special scheme for victims of road accident.

28. Renotify on 3<sup>rd</sup> July, 2009.

**J.R. MIDHA, J**

**MAY 22, 2009**

FAO.No.884/2003

Page 15 of 16

