Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1425 OF 2016
(ARISING OUT OF SLP(C) NO.21125/2015)

U.P.S.R.T.C. Appellant(s)

VERSUS

Km. Mamta & Ors. Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) Leave granted.

2) This appeal is filed by the defendant/appellant-Corporation against the judgment/order dated 28.05.2014 passed by the Division Bench of the High Court of Allahabad in First Appeal from Order No. 1681 of 2014, which in turn,

arises out of an Award dated 18.02.2014 passed by the Motor Accident Claim Tribunal/District Judge (in short 'the Tribunal'), Hathras, Uttar Pradesh in MACT No. 131 of 2010.

3) In order to appreciate the short issue involved in this appeal, it is necessary to state a few relevant facts:

4) The respondents-Claimant(Plaintiffs) filed a Claim Petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 (in short 'the M.V. Act') against the appellant-Corporation before the Tribunal, Hathras claiming compensation to the tune of Rs.36,35,880/- for the death of one Raj Kumar Gautam, who died in a vehicular accident. According to the respondents, on 22.09.2010, Raj Kumar Gautam-the deceased while going on his Motor Cycle bearing No. UP-86F-9224 on Hathras-Agra road near a place called 'Ghas Mandi' was hit by the appellant's bus bearing Registration No. UP-14-AB-9038.

5) It was, *inter alia,* alleged that the offending bus was coming on wrong side with high speed and hit the motor cycle, which was being driven by the deceased, on the right side of the road. The deceased who was aged 49 years sustained extensive injuries and later succumbed to the injuries which gave rise to the filing of the claim petition by his legal representatives (respondents herein) claiming compensation for the untimely death of Raj Kumar Gautam. The respondents also pleaded the details regarding loss of income and other particulars necessary for claiming compensation in the claim petition.

6) The appellant-Corporation filed written statement and contested the claim petition. One of the grounds taken in the defence was that of contributory negligence on the part of the deceased also while driving the motor cycle which resulted in the accident.

7) The Tribunal, by award dated 18.02.2014, partly allowed the claim petition and awarded a total sum of

Rs.24,73,252/- along with interest @ 6% p.a. from date of filing till its realization to the respondents.

8) Challenging the said Award, the appellant-Corporation filed an appeal before the High Court. By impugned order dated 28.05.2014, the Division Bench of the High Court dismissed the appeal and upheld the award of the Tribunal.

9) Against the said order, the appellant-Corporation has filed this appeal by way of special leave.

10) Learned Counsel for the appellant-Corporation while assailing the legality and correctness of the impugned order contended that the High Court without adverting to all the factual details and grounds raised in the appeal, disposed of the appeal in a cryptic manner. According to learned counsel, the High Court neither set out the facts, nor dealt with any issue, nor appreciated the ocular and documentary evidence in its proper perspective, nor examined the legal principles applicable to the issues

arising in the case and nor rendered its findings on contentious issues decided by the Tribunal though urged by the appellant in support of the appeal.

11) Learned counsel further contended that it was the duty of the High Court exercising its first appellate powers under Section 173 of the M.V. Act to have dealt with all the submissions urged by the appellant-Corporation and after appreciating the entire evidence should have come to its own conclusion one way or the other keeping in view the legal principles governing the issues. It was urged that since it was not done by the High Court, a jurisdictional error is committed by the High Court which renders the impugned judgment legally unsustainable. Lastly, the learned counsel urged that if his arguments are accepted, the remand of the case to the High Court to decide the appeal afresh on merits is inevitable.

12) Learned counsel for the respondents, however, supported the impugned order and urged that it does not call for any interference.

13) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submission of the learned counsel for the appellant-Corporation.

14) The powers of the first appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more *res integra*.

15) As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the CPC in ***Kurian Chacko*** vs. ***Varkey Ouseph,*** AIR 1969 Kerala 316, reminded the first appellate court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:

> **"1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.**
>
> **2. <u>An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court.</u> Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation....."**
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> **(Emphasis supplied)**

16) This Court also in various cases reiterated the aforesaid principle and laid down the powers of the appellate Court under Section 96 of the Code while deciding the first appeal.

17) We consider it apposite to refer to some of the decisions.

18) In ***Santosh Hazari*** vs. ***Purushottam Tiwari (Deceased) by L.Rs***. (2001) 3 SCC 179, this Court held (at pages 188-189) as under:

> **".....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it....."**

19) The above view was followed by a three-Judge Bench decision of this Court in ***Madhukar & Ors.*** v. ***Sangram & Ors.***,(2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

20) In ***H.K.N. Swami*** v. ***Irshad Basith***,*(2005) 10 SCC 243,* this Court (at p. 244) stated as under: (SCC para 3)

> **"*3.* The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."**

21) Again in ***Jagannath*** v. ***Arulappa & Anr.***, *(2005) 12 SCC 303,* while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court (at pp. 303-04) observed as follows: (SCC para 2)

> **"*2.* A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."**

22) Again in ***B.V Nagesh & Anr.*** vs. ***H.V. Sreenivasa Murthy***, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this court

reiterated the aforementioned principle with these words:

> **"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:**
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> **(*a*) the points for determination;**
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> **(*b*) the decision thereon;**
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> **(*c*) the reasons for the decision; and**
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> **(*d*) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.**
>
> **4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari* v. *Purushottam Tiwari*, (2001) 3 SCC 179 at p.**

188, para 15 and *Madhukar* v. *Sangram*, (2001) 4 SCC 756 at p. 758, para 5.)

> **5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."**

23) The aforementioned cases were relied upon by this Court while reiterating the same principle in ***State Bank of India & Anr.*** vs. ***Emmsons International Ltd. & Anr.***, (2011) 12 SCC 174.

24) An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See ***National***

Insurance Company Ltd. vs. ***Naresh Kumar & Ors.*** ((2000) 10 SCC 198 and ***State of Punjab & Anr.*** vs. ***Navdeep Kuur & Ors.*** (2004) 13 SCC 680].

25) Coming now to the facts of the case in hand, we consider it appropriate to reproduce the whole order of the High Court infra:

> **"The only ground urged is that there was contributory negligence also on the part of the deceased and therefore, the compensation awarded should have been reduced proportionately. We have perused the site plan and we find that the accident occurred on a crossing. The site plan clearly indicates that the offending vehicle namely the Bus was on the right side of the road left no scope for the deceased who was traveling on the left side of the road. Consequently, we are of the opinion that there was no contributory negligence on the part of the deceased at the time when the accident occurred. The appeal fails and is dismissed.'**

26) Mere perusal of the afore-quoted order of the High Court would show that the High Court neither set out the facts of the case of the parties, nor dealt with any of the submissions urged, nor took note of the grounds raised by the appellant and nor made any attempt to appreciate the evidence in the light of the

settled legal principles applicable to the issues arising in the case to find out as to whether the award of the Tribunal is legally sustainable or not and if so, how, and if not, why?

27) As observed supra, as a first appellate Court, it was the duty of the High Court to have decided the appeal keeping in view the powers conferred on it by the statute. The impugned judgment also does not, in our opinion, satisfy the requirements of Order XX Rule 4 (2) read with Order XLI Rule 31 of the Code which requires that judgment shall contain a concise statement of the case, points for determination, decisions thereon and the reasons. It is for this reason, we are unable to uphold the impugned judgment of the High Court.

28) The appeal thus succeeds and is accordingly allowed in part. The impugned judgment is set aside.

29) As a necessary consequence, the case is remanded to the High Court for deciding the appeal

afresh on merits, keeping in view the principle of law laid down by this Court quoted above.

30) However, we make it clear that we have not applied our mind to the merits of the issues involved in the case and hence the High Court would decide the appeal strictly in accordance with law on merits uninfluenced by our observations. Needless to observe, the High Court will do so after affording an opportunity of hearing to both the parties. We request the High Court to decide the appeal preferably within six months. No costs.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
February 12, 2016.