
(2010) 07 GUJ CK 0009
In the Gujarat High Court
Case No : First Appeal No. 1229 of 1986

Kaliben Vasabhai Kachot and Others	Vs	APPELLANT
Driver Mohmed Umar and Others		RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : (2010) 51 GLR 2248

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Sandip C. Shah, Nos. 1.2.1, 1.2.2, 1.2.3, 1.2.4 and 1.2.5, for the Appellant; Arun H. Mehta, for Defendant Nos. 1 and 2 and Avani S. Mehta, for Defendant No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—Initially, this First Appeal was filed by one Vasabhai Rambhai against judgment and award passed by the Motor Accident Claims Tribunal at Junagadh in Claims Petition No. 29 of 1983. During the pendency of this appeal, the Appellant-original claimant died and his heirs are brought on record. Originally, the Claims Petition was filed for Rs. 3,18,770/- out of which, the Tribunal awarded Rs. 42,700/- with interest @ 6% per annum from the date of application till realization with proportionate costs.

1.1. The Tribunal was pleased to hold the claimant-Vasabhai Rambhai negligent to the extent of 60% and that is why, the amount, which was ascertained by way of economic loss to the claimant, was reduced and it was held that he was entitled to Rs. 42,000/- only. That is how this First Appeal came to be filed for remaining amount of the amount claimed in the Motor Accident Claims Petition (Rs. 3,18,770/- - Rs. 42,000/- = Rs. 2,76,770/-).

2. Learned Advocate Mr. Shah for the Appellant vehemently submitted that the Tribunal has erred in ascertaining the amount of economic loss and after having erred on the point of ascertaining the amount, it further erred in holding the

claimant negligent to the extent of 60% and then reducing that amount.

2.1. The learned Advocate for the Appellant first invited attention of the Court to Para 2 of the judgment and award, wherein, the accident is described. For ready perusal, the same is reproduced:

...The short facts of the case of the applicant in this Claims Petition are that on 2-8-1982, the applicant was proceeding on his motorcycle for going to Badalpara from Vadodara Zala village driving the said motorcycle at a normal speed when from the opposite direction came a Public Carrier (Truck) No. GTX 5336 approaching at a very high speed being driven rashly and negligently by opponent No. 1. However, as alleged, despite the signaling with lights and even though the motorcyclist viz. The applicant retarded the speed of the motorcycle to a dead slow, the Public Carrier knocked down the motorcycle throwing off the applicant and the pillion rider Deva Samat rendering the applicant unconscious. The truck driver then went away leaving the truck at the place of accident. As a result of this accident, the applicant sustained fractures of left hand and both legs and also he sustained an injury on his right eye-brow. Thus, for these injuries he had been hospitalized and had undergone expenses of a large sum as narrated in evidence at Exh. 262....

2.2. The learned Advocate for the Appellant then invited attention of the Court to various Paragraphs wherein, the Court has considered the Issue No. 1, which is as under:

Whether the Petitioner proves that he sustained injuries in a vehicular accident due to rash and/or negligent driving of the vehicle i.e. Public Carrier - GTX 5336 in question by the driver-opponent No. 1?

2.3. The learned Advocate for the Appellant invited attention of the Court to Paras 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.

2.4. The Tribunal, in later part of Para 27, records as under:

Be as it may, but the fact remains that the delivery of motorcycle must have taken place on 4-5-1982, the day on which its insurance begins. Under the circumstances and looking to the facts, it is my conclusion that the motorcycle driver Vasa Ram, is partly proved rash and negligent to the extent of 60% in the circumstances of this case. Therefore, the rashness and negligence which can be attributed to opponent No. 1, the driver of the truck, namely Mohmad Umar, comes to 40%. Accordingly, for Issue No. 1 in M.A.C.P. No. 29 of 1983 may conclusion would be in the affirmative to the extent of 40%...

3. It will be appropriate to consider as to what circumstances the Tribunal has taken into consideration for recording the aforesaid finding before this Court deals with the submissions made by the learned Advocate for the Appellant. It is the case of the claimant-Appellant before the Tribunal that on a road, which is north-south, Veraval being on North and Sutrapada being on South, the accident took place. The motorcycle was going towards Veraval i.e. from south to north

and the truck was coming from Veraval i.e. from North to South. That being so, the western edge of the road will be the correct side for the motorcyclist and eastern edge of the road will be the correct side for the truck. It is the case of the motorcyclist that he was on the extreme western edge of the road and at that time, he saw a truck coming from the opposite direction. It is the case of the motorcyclist (claimant-Appellant) that, "that truck was driven in excessive speed in a rash and negligent manner and though, he gave signal by operating the headlight, the truck driver did not take note of the same and dashed with the motorcycle, while the motorcycle was almost at a halt". If this was true then the truck and the motorcycle would have been found on the western side edge of the road and the right hand side of the truck (driver side) would have been found involved in the accident. Further, if it is true that the truck was driven in the excessive speed then the motorcycle would not have been found on the road but it must have thrown away off the road, on the western side, somewhere, in a roadside pit.

3.1. The claimant Vasabhai Rambhai, with all ability at his command, has deposed to make believe the Tribunal that the motorcycle was on extreme western edge of the road and the truck came and "hit" the motorcycle. Not only that his pillion-rider also, as he is expected to, rendered full support by deposing on the dotted lines. The problem is that the Tribunal and for that reason even this Court, cannot, as is not expected to decide the matter only on the basis of the say of the claimant-Appellant or the pillion-rider.

3.2. There is a panchnama produced. It is at Exh. 202, which depicts an absolutely contrary picture than the one, which is tried to be projected by the motorcyclist. The Tribunal has appreciated this panchnama with a pinch of salt and has discussed that it is nobody's case, "that after the accident somebody had tampered the position of vehicles" and that is why, the Tribunal has recorded while appreciating the contents of panchnama that, "after the motorcycle was hit by the truck, the driver of the motorcycle and the pillion-rider were thrown off and the motorcycle driver had become unconscious". It was his good luck that another motorcycle following him reached the spot of accident within no time and took them to the hospital, where, they could get the medical assistance in time, so at least, on their part, there is no question of they having tampered with the position of the vehicles. So far as the truck driver is concerned, it is the case of the claimant himself and so is the case of the other person that the truck driver had run away from the scene of occurrence and in such situation when the panchnama was drawn on the next day i.e. on 3-8-1982, 9-00 a.m. to 10-00 a.m. (accident took place at 8-30 p.m. on 2-8-1982, the F.I.R. was lodged by the claimant at 3-00 a.m. on 3-8-1982 after having regained consciousness).

3.3. The panchnama goes to show that the width of Tar road at the scene of occurrence is 12 feet; there is kachcha shoulder on both the sides of road having width of 4 feet; the truck is found to be on extreme eastern edge of the road; the motorcycle is lying in front of the truck at a distance of about 10 feet on the

eastern edge of the road. The panchnama also goes to show that the motorcycle and the truck had collided with each other on the left hand side front portion of the truck. This being so, it is not possible to accept the version of the claimant-Appellant and to hold that the motorcyclist was on the correct side of the road and the truck was on the wrong side, even if one wants to be lenient to the motorcyclist-the claimant.

3.4. The Tribunal has also taken into consideration the fact that, "the driver of the motorcycle did not have any "Driving Licence". Not only that, the motorcycle driver is having an audacity to depose before the Tribunal that, "he was driving the motorcycle for last about 20 years and he knew how to drive the motorcycle and he did not have "Driving Licence" ever." Besides, it is noted in panchnama that the motorcycle did not have any "number plate". Thus, in a matter, where the driver of motorcycle does not have any "Driving Licence", the truck is found to be on the correct side, which happens to be the eastern edge of the road, the motorcycle is also found on the eastern edge in front of the truck, which is extreme wrong side for it, the truck has collided with the motorcycle on its left hand side front portion, the Hon"ble Tribunal has rightly recorded the negligence of motorcycle driver, to the extent of 60%.

4. This Court is of the opinion that the Tribunal has committed an error in assessing the negligence of the motorcycle driver only to the extent of 60%. In the assessment of this Court, it was the motorcyclist, who was 100% negligent and not the truck driver.

4.1. Often, it is said that a bigger vehicle has a higher responsibility, and therefore, when negligence is to be apportioned, it should be apportioned keeping this principle in mind, but then, there are cases and cases and this is one such case in the opinion of this Court, wherein, the accident has taken place only on account of negligent driving of a motorcyclist. This Court is mindful that normally sympathy is with a pedestrian, when it is an accident involving a vehicle and a pedestrian. Similarly, when there is a vehicular accident between two vehicles, the balance tilts towards the lighter vehicle. But this Court does not want a message to go by allowing this First Appeal that, "you drive a motorcycle or any vehicle without "Driving Licence", without "Number Plate", absolutely on a "wrong side" and cause an accident and still you are entitled to get compensation". (Emphasis supplied)

4.2. The learned Advocate for the Appellant invited attention of the Court to Exh. 201 - F.I.R. The learned Advocate for the Appellant invited attention of the Court to the fact that the accident took place at 8-30 p.m. on 2-8-1982, the F.I.R. was lodged at 3-00 a.m. on 3-8-1982 in the hospital. On reading the F.I.R., it does not get any support from the panchnama, it is clear that the complainant was conscious of the fact that, if at all, he wants to get any compensation and wants to avoid the liability of the owner of the motorcycle as well as his own liability, he must state that, "while he was driving the motorcycle on extreme western edge i.e. to say that on its correct side, the truck came and dashed with the

motorcycle. (Emphasis supplied)

4.3. As discussed hereinabove, if it was true that the truck was driven in an excessive speed and if it had come and hit the motorcycle, then, the motorcycle would have been found thrown in a roadside pit and it would not have remained on the road at all. But then, that is not the position shown by the panchnama. This F.I.R. does indicate that, "the truck driver leaving his truck at the place of accident had run away that rules out the possibility of any tampering having taken place by the time the panchnama was drawn in the morning at 9-00 a.m.

4.4. The learned Advocate for the Appellant referred to Exh. 202 -panchnama. The panchnama clearly shows that, "the vehicles are found to be on extreme eastern edge of the road. It is stated that the truck is standing facing North and its Radiator and Water Tank are found to have been bent; that its Bumper is not seen". It then proceeds to record that, "from the front portion of the truck, at a distance of 10 feet, one black colour motorcycle is lying, which does not have any "number plate and the Bumper of the truck is found near the front wheel of the motorcycle". It is stated that, "beyond the Tar road having 12 feet width, beyond the Carrier (Truck) towards East there is 4 feet width kachcha shoulder". This panchnama also records that, "the owner of the motorcycle one Shri Nathabhai Bhagvanbhai, who happens to be the maternal uncle of Devabhai Samatbhai - the pillion-rider, is present and the motorcycle is handed over to him. The truck is handed over to its owner Shri Umar Mahmad". The panchnama also records that, "the panchnama was drawn using umbrella as it was raining and as there was rain, no other signs were noticed". It specifically records that, "both the vehicles are found to be on the eastern edge of Tar road touching the kachcha shoulder".

4.5. The learned Advocate for the Appellant next invited attention of the Court to the Exh. 262 - Deposition of the driver of the motorcycle. This deposition reflects the mental frame of the deponent. He states that, "I know how to drive the motorcycle. I have no Driving Licence. I have 20 years" experience to drive motorcycle. I was driving the motorcycle on western side of the road. At that time I had not consumed any intoxicating drug. Our speed was slow".

4.6. At the time of reading this deposition, it was put to the learned Advocate for the Appellant that, as to why it is required to be stated that, "I had not consumed any intoxicating drug", the learned Advocate for the Appellant submitted that he has no explanation for the same. It is also put to the learned Advocate for the Appellant that, as to in how many M.A.C. Cases he has come across that the witness himself volunteers to state that, "I had not consumed any intoxicating drug, the learned Advocate for the Appellant fairly submitted that he does not remember any such case.

4.7. The learned Advocate for the Appellant next invited attention of the Court to Exh. 263 - Deposition of Shri Devabhai Samatbhai - pillion-rider. As was expected from the pillion-rider to follow the driver on a motorcycle, he followed

the driver in the deposition also. He stated that, "the motorcycle was driven by Vasabhai Rambhai at ease, meaning thereby, he was driving slowly; that the motorcycle was driven on the western side of the road, at that time, from the opposite direction, one truck came in a high speed and its both the lights were full; that we made our light dim and full, but the truck came to our side and hit our motorcycle from the front, and thereby, our motorcycle and we both, were thrown on the western side of the road. "

4.8. If this was so, the claimant ought to have examined a person, who reached on the site of the accident first in point of time and shifted the claimant and the pillion-rider to the hospital, but no such attempt is made. As the record stands, the panchnama as it stands and as is discussed hereinabove, show the factual position otherwise.

4.9. The claimant has examined one Sidabhai Vighabhai, as Claimant Witness No. 3 at Exh. 271. On reading his deposition, it does not inspire any confidence because except bare words of this witness, there is no other supporting material coming on record, like if this witness had taken the claimant-injured to the hospital, his reference would have been found in the medical papers. The way this witness has deposed shows that he had entered the witness box to oblige the claimant. This Court, having gone through the deposition of this witness noticed that he has stated in the opening part that, "he had seen the accident involving Vasabhai and Devabhai". He further states that, "on the day of the incident, he was travelling on a motorcycle of Meraman Karsan from "Sutrapada" to "Kanek". The motorcycle was driven by Meramanbhai. Vasabhai's motorcycle was going ahead. He was about a "furlong" ahead from us. After the incident, about five minutes later, we reached the place. Due to accident, road was blocked. Both the vehicles were lying on the road on our left hand side. Vasabhai and Devabhai were serious". This witness was cross-examined and he states that, "both the vehicles were on the western side of the road near the edge". Later on, he states in cross-examination that, "he does not have any knowledge about the directions, but I can understand the right and left". He also stated in cross examination that, "on the road, no goods or broken glasses were found. As we were engaged in the treatment of the injured, we did not notice as to what was lying there". He then states that, "he had passed on this road for the first time". He also states that, "at the place of incident, the road was like kachcha road. The road was narrow. That I had not informed the police about the incident. I have not seen the colour of the motorcycle. I do not know the colour of the truck. The truck was lying in such a manner that the entire road was blocked and was lying before the motorcycle". It is also important to note that, he also states that, "he knows Vasabhai only since the time of accident and to Devabhai, he was knowing a little". Finally, he states that, "it is not true that he has come to help the claimants".

4.10. This deposition is suggestive of the fact that claimants have felt that their version may not be believed, and hence, they tried to bring this witness as an

independent witness.

4.11. Last but not the least, the learned Advocate for the Appellant invited attention of the Court to Exh. 351 - Deposition of the truck driver. He has deposed that on the day of accident, he was driving the truck bearing No. GTX-5336 from Veraval to "Kadva". He has also deposed that from the opposite direction a person was, driving motorcycle, coming towards him. He has also deposed that the motorcycle was driven with full headlight and that the motorcycle was coming in a "zigzag" manner and while doing so, the motorcycle dashed with the front left portion of the truck. Possibly, this "zigzag" description of driving made the claimant to volunteer in his Examination-in-Chief that, "he had not consumed any intoxicating drug". (Emphasis supplied)

4.12. No other point was argued by the learned Advocate for the Appellant.

5. As discussed hereinabove, this Court is of the considered opinion that it was the motorcyclist, who was 100% negligent and he was the author of the accident. As there is no appeal filed by the other side, this Court does not take the matter any further and dismisses this First Appeal.