

(2014) 12 AHC CK 0186

In the Allahabad High Court

Case No : First Appeal From Order Defective No. 740 of 2014

National Insurance Co. Ltd.

APPELLANT

Vs

Lala Ram and Others

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2015) 2 ALJ 236

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : O.P. Srivastava, Advocates for the Appellant

Judgement

Anil Kumar, J.—Heard Sri. O.P. Srivastava, learned counsel for the appellant and perused the record. Facts, in brief, of the present case are that on 7.8.2012 at about 6.30 p.m. when claimant/Lala Ram after natural call coming back to his home near Mohammadi to J.P. Ganj, a Hero Honda Motorcycle having registration No. U.P.31U/2092 driven by Sri. Vinod Kumar coming from Mohammadi due to rash and negligent driving, dashed him from behind near the field of Vijay Bahadur as a result of which he sustained injuries, admitted in K.L. Memorial Hospital, Sahajahanpur for medical treatment.

2. In order to get compensation in the matter, a claim petition has been filed by Sri. Lala Ram, registered as M.A.C.P. No. 374 of 2012 (Lala Ram v. Vinod Kumar and another) before the Motor Accident Claims Tribunal/Additional District Judge, Court No. 3, Lakhimpur Kheri under Section 166 of the Motor Vehicles Act.

3. National Insurance Company Limited impleaded as respondent filed written statement inter alia stating therein although Hero Honda Motorcycle having registration No. U.P.31U/2092 has been insured by the Insurance Company but as per facts on record no accident has took place by the said vehicle.

4. Learned Tribunal on the basis of material evidence on record, allowed the

claim petition awarding a compensation of Rs. 1,60,050/-with 7% interest from the date of presentation of the claim petition to be paid by the Insurance Company/defendant No. 2 to the claimants, challenged by the National Insurance Company under Section 173 of the Motor Vehicles Act in the present appeal.

5. Sri. O.P. Srivastava, learned counsel for the appellant/Insurance Company has raised the sole argument that in the instant matter, learned Tribunal has erred in holding that accident took place by Hero Honda Motorcycle having registration No. U.P.31U/2092 driven by Sri. Vinod Kumar has caused the accident in which Sri. Lala Ram/claimant sustained injuries rather the said fact is totally incorrect and wrong as no accident has taken place so it is totally incorrect on the part of the Tribunal to hold that an accident took place due to rash driving of the driver of the motorcycle as such impugned judgment is liable to be set aside.

6. I have heard learned counsel for the appellant and gone through the record.

7. The Tribunal after exchange of pleadings and material on record in order to decide the controversy in the present case framed four issues. So far as issue No. 1 is concerned is as follows:--

8. Further, learned Tribunal on the basis of evidence given by Lala Ram (P.W. 1), Balram (P.W.2), Bitana (P.W.3) and Vinod Kumar (D.W.1) and other material on record came to the conclusion that accident took place due to rash and negligent driving of the driver of the motorcycle having registration No. U.P. 31U/2092. In addition to the said finding, the Tribunal has also taken into consideration while coming to the conclusion that an accident took place due to fault of driver of motorcycle for which a criminal case is pending against Sri. Vinod Kumar before the competent court on the basis of investigation done by the police authorities, a F.I.R. lodged under sections 279, 338 IPC, so taking into consideration the said facts as well as the word "Negligence" which means a breach of duty caused by the omission to do something which a reasonable man, guided to those considerations, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Since no absolute rule can be laid down by which negligence or its absence can be judged in a given case, "negligence" would necessarily vary in different cases and, for judging the same, all the attending and surrounding facts and circumstances of a particular case have to be taken into account.

9. And, Hon"ble the Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others, has held as under:--

"Composite negligence refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of mem. In such a case, the injured need not establish the extent of responsibility of each

wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence. His claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence (see also *A.P.S.R.T.C. and Another Vs. K. Hemalata and Others*, and *Sudhir Kumar Rana Vs. Surinder Singh and Others*,)."

10. I do not find any illegality or infirmity in the findings given by the Tribunal while passing the impugned judgment dated 9.5.2014 that the accident took place due to rash and negligent driving of the driver of Hero Honda Motorcycle as a result of which claimant/Lala Ram sustained grievous injuries accordingly awarded compensation to him.

11. No other point has been argued or pressed by learned counsel for the appellant before me. For the foregoing reasons, the appeal lacks merit and is dismissed as such.