
(2011) 12 DEL CK 0308
In the Delhi High Court
Case No : MAC App. 773 of 2010

New India Assurance Co. Ltd.

APPELLANT

Vs

Heera Lal and Others

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0308

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Kanwal Chaudhary, for the Appellant; Amitabh Jha, for R-1(i) to (iii), for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Appellant New India Assurance Co. Ltd. impugns the award dated 27.08.2010 passed by the Motor Accident Claims Tribunal (the Tribunal). The case relates to the death of one Sarita, who was aged 26 years and suffered fatal injuries in the accident, which took place on 28.09.2008. The Tribunal awarded a compensation of Rs. 8,56,000/-.

2. The quantum of compensation is not disputed by the Appellant. The only ground of challenge is that the accident took place on account of contributory negligence of Heera Lal the driver of motorcycle No. DL-7SAM-7471. It is urged that he was driving the motorcycle under the influence of liquor and apart from Hira Lal and his wife deceased Sarita, his two children were also sitting on the pillion seat at the time of accident. It is urged that driving the motorcycle under the influence of liquor with three persons on the pillion seat contributed to the accident.

3. These issues were raised before the Tribunal. The Tribunal held as under: -

9. Since issue no.1 and 2 are based on common facts they are taken up together for the purpose of disposal. The evidence of PW-1 is relevant for both these issues. It has been deposed by PW-1 in affidavit of his evidence that on

28.09.2008 at about 9.15 p.m. when he was coming back on his motorcycle he was hit by the truck bearing registration no. UP-78-AN-5355 from behind. According to PW-1 his wife Smt. Sarita and his two children were sitting as pillion riders on his motorcycle. After the impact according to PW-1 he alongwith other pillion riders fell on the road and his wife received head injuries resulting into her death and he received grievous injuries. According to PW-1 this accident has taken place because of rash and negligent driving on the part of driver of the truck.

10. The FIR of the case has been registered on the statement of PW-1. PW-1 has been cross examined by the counsel for R1, R2 and also by the counsel for R3. The defence sought to be put up in cross examination by counsel for R1, R2 is that this accident has been caused because of his own negligence of PW-1 as at the time of the accident he was driving the motorcycle under the influence of liquor. Attention of PW-1 has been drawn to his MLC and at the same time the defence has also been put up that because of riding of four persons on motorcycle the injured failed to maintain balance of it and is himself responsible for this accident.

11. It may be noted that the respondent no.1 and 2 have not led any evidence in defence. The FIR in this case has been registered against the driver of the truck. The MLC of the injured Heera Lal relied upon in defence no doubt refers to the smell of alcohol. However, there is no evidence further on this point to show to what extent the injured Heera Lal has consumed the liquor. No blood test of him has been taken to find out the exact quantity of liquor consumed by him which could otherwise be helpful to draw an inference whether the consumption of alcohol in the present case has the effect upon injured to the extent that he was unable to drive the motorcycle altogether.

12. Drunken driving is always most unsafe on road not only to his own life of driver but also to the other users whether they are on a vehicle driven by a drunk person or otherwise using road at that point of time. There is a great publicity by the Govt. through media or otherwise to spread awareness "not to drive while drunk" but it seems it is only falling to deaf ears. The drinking habit has almost become a culture now a days and after that driving the vehicle in such a situation by them is most unsafe and is a matter of serious concern.

13. However, as far as present case is concerned there is no evidence to the fact that PW-1 in any manner has contributed to the causing of the accident. The question of contributory negligence is a question of fact. Evidence of the party is needed to prove the same. The traces of alcohol in the breath of the injured without support of any other evidence by itself is not sufficient to infer that the injured Heera Lal has also contributed to the causing of the accident on that account. The contributory negligence is a question of fact which has to be proved like any other fact by leading supportive evidence. The plea of contributory negligence is thus only to be rejected. No doubt it would have been much better if PW-1 had driven the motorcycle without consuming of liquor howsoever small

quantity, it was but in legal assessment the parameters for drawing conclusion to that drunken driving has contributed to the accident needs support of evidence which is not present in this case. The observation in MLC of injured Heera Lal of smell of alcohol by itself cannot be considered as sufficient to draw adverse inference against him to the effect that he has contributed to the causing of the accident in the present case. In order to show that the injured Heera Lal was negligent in driving his motorcycle because of consumption of alcohol, it was for the concerned driver R1 to lead positive evidence to carry this Court to concur with the submissions made in this regard by the counsel. No such evidence has been produced by them. Since, it was the plea of the driver of the truck that injured Hira Lal because of consumption of alcohol was unable to drive the motorcycle, driver of the truck was to prove the same with the help of the supportive evidence. Mere giving suggestion in cross examination of the injured by taking support from his MLC cannot be considered as sufficient to discharge the burden in the present inquiry.

14. Similarly the other defence of riding of four persons on the motorcycle to take as a reason on the part of injured Heera Lal for his contributing negligence will be an incorrect inference without any support of positive evidence led in this regard by the concerned respondent taking up this plea. The injured Heera Lal was riding the motorcycle with wife and two minor children. This fact by itself does not mean he was negligent. The respondent since has not led any evidence to support this line of defence he cannot be allowed to succeed on this argument.

15. The plea of the injured in his evidence is that he has been hit from behind by the truck. Mechanical Inspection Report of the truck involved in the accident copy of which has been placed on record alongwith criminal case record shows that all fresh damages on truck were on the front left side of the truck. This accordingly supports the statement of the injured that his motorcycle was hit from behind by the truck. The truck driver should have taken due care in driving of the truck and being a heavy vehicle should have maintained a proper distance from the other vehicles on the road. In *Basant Kaur & Ors. V. Chattar Pal Singh & Ors.* 2003 ACJ 369 M.P. (DB) it was held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing the accident.....

4. On the other hand it is urged by the learned counsel for the Respondents No. 1(a) to (c) that Heera Lal had taken homeopathic medicine. There was no evidence on record, which could suggest that Heera Lal had consumed liquor or alcohol or he was driving the motorcycle under the influence of alcohol. It is submitted that Heera Lal himself carried the injured to the Hospital, which indicates that he was fully conscious and was not under the influence of liquor even if it is assumed that he had taken small quantity of liquor.

5. Similarly there is no presumption in law that if Heera Lal was carrying his two minor children along with his wife, he would lose motorcycle's balance.

6. As observed by the Tribunal there was no evidence produced on record that Heera Lal was under the influence of liquor. Moreover, the driver i.e. Respondent No. 3 herein did not enter the witness box to place any evidence on record that there was any rashness or negligence on the part of Heera Lal in driving the motorcycle. The findings on the negligence given by the Tribunal are reasonable and logical.

7. In the circumstances of the case, it cannot be said that the accident took place on account of rashness/ negligence on the part of Heera Lal.

8. The appeal is devoid of any merit, the same is accordingly dismissed.

9. It is submitted by the learned counsel for the Appellant that 50% of the award amount along with proportionate interest was already released by an order dated 03.02.2011. Out of the balance 50% lying deposited in this Court, a sum of Rs. 50,000/- shall be released in cash to Respondent Heera Lal to be spent for welfare and maintenance of the minor Respondents No. 1(b) & (c). Rest of the amount shall be held in Fixed Deposit in equal share in the name of Respondents No. 1(b) and (c) till they attain the age of majority.

10. The appeal is disposed of in above terms.

11. The statutory amount, if deposited by the Appellant, shall be refunded to the Appellant.