
(2012) 02 DEL CK 0248
In the Delhi High Court
Case No : MAC App. 36 of 2011

New India Assurance Co. Ltd.

APPELLANT

Vs

Rimjhim Ispat Ltd. and Others

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Citation : (2012) 4 TAC 213

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

Bench : Single Bench

Advocate : Kanwal Choudhary, for the Appellant; P.K. Sharma, for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Mittal, J.—These two Appeals arise out of an accident between a truck No. UP-78T-9758 and a Tata Sumo bearing No. DL-6CA-8077. MAC APP. 36/2011 relates to death of Prem Dutt Bhatt in the accident which took place on 5.5.2006. A compensation of Rs. 2,03,796/- with interest @ 8% per annum was awarded in favour of respondents 3(a) to (c).

2. Similarly MAC 41/2011 relates to the death of Prem Prakash wherein a compensation of Rs. 11,38,825/- was awarded.

3. The only ground of challenge common in both the Appeals is that the Tata Sumo vehicle hit the truck from the rear. Unless and until the Tata Sumo was being driven at a very fast speed the accident could have been avoided by the driver of the Tata Sumo. It is thus pleaded that the accident was caused on account of rash and negligent driving of the driver of the Tata Sumo or in the alternative it is submitted that there was contributory negligence of the driver of Tata Sumo. Both these Claim Petition Bearing Suit No. 280/2006 and 288/2006 were tried jointly. The Claimants examined several witnesses including four eye witnesses to the accident.

4. PW 4 Sunil Kumar filed his Affidavit Ex. P-25 by way of evidence. He deposed

that the Tata Sumo Car was being driven by Daya Ram at a very slow speed. At about 4.30 A.M. the Tata Sumo reached near Chand Filling Petrol Pump at G.T.Road, Arnia, Police Station Khurja, Bullandshahar, UP. A truck bearing No. UP 7080 9758 was going ahead of the Tata Sumo Car. The truck was being driven by Gautam Kumar Tiwari at a very fast speed rashly and negligently. The driver of the truck suddenly applied brakes in the middle of the road as a result of which the Tata Sumo Car which was following the truck dashed into the truck. In the cross-examination it was suggested to this witness that the driver was drowsy or that he was drunk. The witness showed his ignorance about the same.

5. The second witness examined by the claimants was Keshav Dutt. He corroborated Sunil Kumar's testimony in his Affidavit Ex. P-16. In the cross-examination, the witness deposed that the speed of the truck was about 80 km per hour. The Tata Sumo was following it at a distance of about 40 feet almost at the same speed. The witness denied the suggestion that the driver was drunk or that he was sleepy.

6. The third witness is PW-6 Narendra Bhatt who in his Affidavit Ex. P-20 corroborated the version as given by PWs 4 and 5. In cross-examination, a suggestion was given to him that the truck gave an indication to take left turn and the accident took place because of negligence of the driver of Tata Sumo which was denied by the witness. The witness also denied the suggestion that the driver of the Tata Sumo was drunk or was sleepy. Thus, a new case was tried to be set up by this witness that the truck driver took a left turn after due indication and that the driver of Tata Sumo on account of his own negligence dashed his vehicle into the truck.

7. The fourth witness is PW 7 Shambhu Sharma. He corroborates the three earlier witnesses in his examination-in-chief by way of an Affidavit (Ex. P-35). In cross-examination the witness deposed that the truck was going at the speed of 70-80 kmph whereas the Tata Sumo was going at the speed of 60 kmph. He denied that the Tata Sumo driver was drunk or was feeling sleepy. PW 4, PW 5 and PW 7's testimony that the truck driver suddenly applied brakes in the middle of the road was not challenged in cross-examination. A contrary stand was taken on behalf of the insurance company in PW6's cross-examination when suggestion was given to this witness that the truck driver took a left turn after due signal and that on account of rash and negligent driving by the driver of Tata Sumo the accident occurred. It is important to note that driver of Truck No. UP-78T-9758 preferred not to contest the proceedings who was ordered to be proceeded ex parte.

8. The owner of the truck M/s. Rimjhim Ispat Ltd. took a contrary stand in the WS and completely denied the involvement of the truck in the accident. The driver of the vehicle was not produced to give his version as to how the accident occurred. Thus I am inclined to accept the version as given by the four witnesses mentioned earlier that the accident was caused on account of the sudden application of brakes by the driver of the truck in the middle of the road.

9. It may be noticed that the accident took place at 4.30 A.M. It was the duty of the truck driver not to apply the brakes while he was driving the truck at a very fast speed. It cannot be said that there was any negligence on the part of the driver of the Tata Sumo Car.

10. Otherwise also even if it is assumed that there was some negligence on the part of the Tata Sumo Driver it was not a case of contributory negligence but of the composite negligence and the claimants were entitled to sue all or any of the wrong doer to claim compensation. In T.O. Anthony Vs. Karvarnan and Others, , which is relied on by the Appellants it was held as under: -

"6. Examiner"s 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 wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer 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 of 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 stands reduced in proportion to his contributory negligence."

11. Thus although I have already held earlier that there was negligence on the part of the truck driver and he was responsible for causing the accident, even if it is assumed that there was some negligence on the part of the Tata Sumo driver it does not affect the claim petition filed by the claimants. In case of composite negligence a victim can sue all or any of the tortfeasors to claim compensation for the wrongful act of the joint tortfeasors. The Appeals are devoid of any merit and same are accordingly dismissed.