
(1990) 12 DEL CK 0012

In the Delhi High Court

Case No : First Appeal No. 69 of 1990

New India Assurance Company Ltd.

APPELLANT

Vs

Veena Aggarwal and Others

RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Citation : (1991) 1 ACC 359 : (1991) ACJ 856 : (1991) 43 DLT 372

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : B.R. Sabharwal, B.R. Soni and C.L. Vats, for the Appellant;

Judgement

S.N. Sapra, J.

(1) Briefly stated, the facts are that, on April 1, 1986, deceased Dr. Rajinder Kumar Aggarwal, was going on his scooter No. Dei 5737, after meeting his in-laws, from Rouz Avenue, New Delhi, to his house in Krishan Nagar, Delhi. Around 6 P.M., when the deceased had reached near, Ramesh Park, Pusta Road, Shakarpur, a tempo, having registration No. Dhl 8938, which was being driven by Subhash Chand, respondent no. 4 herein, rashly, recklessly and negligently, came from the opposite side and hit the scooter of the deceased and, as well as, the deceased. The tempo, not only hit the deceased, but also, hit two scooters, which were ahead of the scooter of the deceased, with the result, that the persons, driving both the scooters lost control. Due to the sudden impact of the tempo and the two scooters, the deceased fell down on the road, along with his scooter, and received injuries on head and body. This resulted in the death of Dr. Rajinder Kumar Aggarwal, just after four hours of the accident.

(2) The claimants, who are respondents 1, 2 and 3 herein, being the widow and minor daughters of the deceased. Dr. Rajinder Kumar Aggarwal, filed a petition, u/s 110-A and Section 92-A of the Motor Vehicles, 1939, Act, thereby, claiming a sum of Rs. 15,90,000.00 , compensation on account of the accidental death of the deceased.

(3) Vide judgment dated November 20, 1989, Motor Accident Claims Tribunal awarded a sum of Rs. 1,50,000.00 , with interest, at the rate of 12 per cent per annum, in favor of claimants, respondents 1, 2 and 3 herein, and against the appellant and respondents 4 and 5.

(4) Against this judgment and award, the present appeal has been filed, by New India Assurance Co. Limited, u/s 110-A of the Motor Vehicles Act, 1939.

(5) Notice to respondents, was issued to show cause, as to why the appeal be not admitted.

(6) The only ground of challenge, raised in the appeal, is that the Insurance Policy, issued by the appellant, in favor, of the owner namely, Prem Kumar, respondent no. 5 herein, had lapsed, prior to the date of accident, as the owner had transferred the offending vehicle to Shri Subhash Chand. on December 29, 1985. Reliance has been placed on the judgment of the Full Bench of this Court, in case Anand Sarup Sharma Vs. P.P. Khurana and others, .

(7) The third party liability of the insurance company ends, on transfer of vehicle, by insured. The insurance policy lapses, at the time of transfer of a vehicle by the owner/insured, to the transferee. The transfer is governed, under the provisions of the Sales of Goods Act. Transfer is complete when the consideration amount is paid and the delivery of the vehicle is taken. These propositions of law were settled by the Full Bench of this Court in Anand Sarup Sharma (supra).

(8) There is no controversy on the question of law. The question, which arises for consideration in the present case is, whether it has been established by evidence that, the offending vehicle was transferred by the insured, namely, Prem Kumar, to Shri Subhash Chand.

(9) Mr. Sabharwal, learned counsel for appellant, urges that sufficient documentary evidence has been produced, before the Tribunal, in support of the plea of transfer of offending vehicle. In this regard, Mr. Sabharwal has referred to the written statement, filed by the insured, the notice, Ext. PW-8/R-3/1, issued by the Investigating Officer; statement of Shri Prem Kumar, made before Metropolitan Magistrate, which is Ext. Public Witness R3/2, statement of the alleged purchaser Shri Subhash Chand, respondent no. 4 herein, Ext. PW8-R2/3.

(10) In his written statement, respondent no. 5, did allege that he had sold the offending vehicle, before the date of accident. It may be pointed out that after filing the written statement, the insured absented himself and was proceeded ex parte. Similarly, Shri Subhash Chand, respondent no 4, who did not file any written statement, was also proceeded ex parte. In fact, no evidence was led by respondents 4 and 5, before the Tribunal, with regard to the transfer of the vehicle. Only a photo copy of a document, titled "Superdari" was placed on record. This is marked A. The allegation, made by the insured, in his written statement, is an admission in his own favor. He was proceeded ex parte. This document mark A, which is just a photo copy, of the alleged "superdari", which

according to the appellant, is the transfer deed, cannot be taken into consideration, as, the transfer deed has not been proved. It is possible, that the insured made the allegation in the written statement, so as to avoid his liability.

(11) EXT. PW8-R3/1, is a notice, which was issued by Assistant Sub Inspector of police, who was investigating the case. with regard to the aforesaid accident. This notice was issued, u/s 88 of the Motor Vehicles Act, to Prem Kumar, the insured. By this notice, respondent no. 5 was directed to produce the driver, who allegedly ran away, from the spot after the accident.

(12) EXT. PW8-R3/2 is a copy of the statement, made by Prem Kumar, on April 25, 1986, in pursuance to the aforesaid notice. This statement was made to the Investigating Officer, and is in the form of a letter. This statement was made without oath. The contention of Mr. Sabharwal is that, taking together the notice and this statement, .there is a clear admission, on the part of the insured, that he had transferred the vehicle for Rs. 30,000.00 , to Shri Subhash Chand, in the month of December, 1985.

(13) Mr. Sabharwal submits that, this statement has been proved before the Tribunal, and this is an admission. He has placed reliance upon- the judgment in Chhotan Prasad Singh and Others Vs. Hari Dusadh and Others, . The facts of this case are not applicable, to the facts and circumstances of the present case. The learned Tribunal has dealt with Exts. PW8-R3/1 and Exts. PW8-R3/2, and rightly held that from these documents, it was not proved that the vehicle had been transferred, in December, 1985.

(14) In my view, the notice issued by the Investigating Officer, and the statement made by the insured, during the course of investigation, in no way, support the case of the appellant that the vehicle had been transferred.

(15) EXT. PW8-R2/3, is a copy of the statement, made by Shri Subhash Chand, on April 25,1986, respondent no. 4 herein, before the Metropolitan Magistrate, Delhi. This statement was made., with a view to take the offending vehicle, on superdari, without oath. In this statement, it is alleged that the Matador was in the name of Prem Kumar, and the vehicle had not yet been transferred. He also alleged that he had purchased the Matador from Prem Kumar.

(16) Firstly, it is not an admission, made by the owner and secondly, this was a statement by Subhash Chand, to take the vehicle on superdari. This has been rightly discarded by the Tribunal. In my view, this, in no way, shows that the vehicle was transferred.

(17) It may be noticed, that the vehicle continued to be registered, in the name of the insured Prem Kumar. PW6 stated that on April 25, 1986, an application was received from Prem Kumar, for transfer of the vehicle in favor of Subhash Chand. It may be pointed out that the accident took place on April 1.1986, and this application was made thereafter, though according to the case of the appellant, the transfer took place on December 29,1985.

(18) I am of the view that there is no evidence, worth the name, which can prima facie establish, that the vehicle was transferred, prior to the date of accident. Thus, it is not a fit case, for admission. The learned Tribunal has dealt with the evidence at length, and has rightly come to this conclusion.

(19) The appeal is dismissed in liming. 375

(20) Vide order dated March 22,1990, the operation of the impugned judgment/ award was stayed. Same is vacated. The appellant, shall deposit the the entire amount of compensation with interest, within one month, with the trial court. The amount shall be withdrawn by the claimants, in accordance with the award.