
(2014) 07 RAJ CK 0119
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 3751/2011

Pankaj Vashistha

APPELLANT

Vs

Ashok Sharma

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 07 RAJ CK 0119

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Manish Sharma, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This civil misc. appeal u/s 173 of the Motor Vehicle Act, 1988 has been filed against the judgment dated 26.04.2011, passed by the Judge, Special Court (Communal Riots/Motor Accident Claims Tribunal, Jaipur (hereinafter "the learned MACT")) whereby the claim of the appellant-claimant (hereinafter "the claimant") has been dismissed by the MACT holding that no negligence of the rider of the motorcycle bearing registration No. RJ-14-32-M-1493 insured with the respondent-National Insurance Company Ltd. (hereinafter "the Insurance Company") having been established, the claimant was not liable to any compensation.

2. The counsel for the claimant submitted that the judgment dated 26.04.2011 is perverse in holding that there was no negligence of the rider of the offending motorcycle in spite of the un-controverted evidence of the claimant. Counsel submitted that the offending motorcycle was insured under a comprehensive package policy and as pillion rider thereof, the claimant was entitled to compensation for the injuries suffered in the accident.

3. Heard the counsel for the claimant and perused the impugned judgment dated 26.04.2011, passed by the MACT.

4. The facts of the case are that a motorcycle bearing registration No. RJ-14-32-M-1493 was owned by one Ashok Sharma. The said motorcycle was insured under a comprehensive package policy with the Insurance Company for the period 19.01.2004 to 18.01.2005. On 21.06.2004, the claimant was pillion rider on the said motorcycle which was being ridden by the owner Ashok Sharma. It appears that the said motorcycle was involved in an accident with another motorcycle which did not bear a registration number. A FIR with regard to the accident was lodged by Ashok Sharma, the owner of the insured motorcycle on 07.08.2004. On investigation made, the police found that the accident of 21.06.2004 was occasioned by rash and negligent riding of the "other" motorcycle which could not be ascertained for reasons of no registration number being given out by the informant or otherwise found from the investigation made by the police. A final report (negative) was therefore filed by the police and it appears that it was accepted by the competent court as no protest petition was filed by the informant or any other person.

5. In the aforesaid background, the claimant laid a petition for compensation on 03.11.2004 alleging that the accident of 21.06.2004 was occasioned not so much by rash and negligent riding of the "other" motorcycle which could not be identified, but because of the rash and negligent riding of Ashok Sharma, owner of the motorcycle No. RJ-14-32-M-1493, insured under the comprehensive package policy with the Insurance Company. It was the case of the claimant that he as pillion rider was a "third party" in the circumstances obtaining and for the injuries having been caused to him in an accident for reasons of rash and negligent riding by the owner of the motorcycle No. RJ-14-32-M-1493, he was entitled to compensation.

6. The owner/rider of the motorcycle No. RJ-14-32-M-1493 and the Insurance Company were impleaded as parties. The respondent-Insurance Company opposed the claim petition. It was stated that the petition had been belatedly filed. The allegation of rash and negligent riding by the insured while riding motorcycle No. RJ-14-32-M-1493 was falsely made within an eye on compensation. It was prayed that the claim be dismissed.

7. The learned MACT noted that the claimant had filed no First Information Report with regard to the alleged rash and negligent riding of Ashok Sharma while the claimant was pillion rider on his insured motorcycle No. RJ-14-32-M-1493 on 21.06.2004. The learned MACT also found that the aside of the bald oral assertion of the claimant, no documentary evidence such as site plan of the accident indicating the negligence of the insured was filed before it. It was also noted that in his cross-examination before the MACT, the claimant clearly admitted that Ashok Sharma was riding his motorcycle on the side as warranted under the traffic rules. The MACT also took into consideration that in the course of investigation into FIR lodged by Ashok Sharma the claimant did not seek to have his statement recorded before the Investigating Officer with his allegations of Ashok Sharma's negligence. Taking into consideration the overall facts and

circumstances of the case and finding it uncomfortable to rely on a belated claim petition filed and supported by the claimant's self serving oral evidence alone, the MACT dismissed the claim petition holding that the negligence of Ashok Sharma, the owner/rider of the insured motorcycle No. RJ-14-32-M-1493 was not established.

8. In my considered opinion, the impugned judgment dated 26.04.2011 passed by the MACT is well reasoned objectively taking into consideration the material facts/evidence on record. Orders of the courts below cannot be casually set aside by the appellate court unless a palpable error either on facts or law is established. The petition of the claimant has been dismissed on the finding of fact by the MACT that the negligence of the rider of the insured motorcycle on which the claimant was the pillion rider at the time of the accident on 21.06.2004 was not established consequent to which neither owner nor his insurer were liable for compensation. There is nothing arbitrary, erroneous or perverse in the impugned judgment dated 26.04.2011, passed by the MACT, Jaipur. To my mind, the facts of the case do not warrant any interference by this Court in this appeal.

9. No force in the appeal. Dismissed.