

(2009) 05 SHI CK 0015
In the High Court Of Himachal Pradesh

Sandeep Sharma and Others	Vs	APPELLANT
Smt. Kusum Lata and Others		RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Citation : (2009) 2 ShimLC 246

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—This appeal has been preferred by the respondents against the award passed by the learned Motor Accident Claims Tribunal-(II), Kangra at Dharamshala, Camp at Hamirpur, awarding a sum of Rs. 2,38,600 alongwith interest for the death of Ashit Gaurav, who died in an accident on 28.6.2001 while he was riding on a Motorcycle No. HP-22-7396, which was being driven by Sachin Sharma, appellant No. 2 herein, (who will hereinafter be referred to as "Sachin").

2. The claimants are the father, mother and younger brother of the deceased. It was pleaded that on 28.6.2001 at about 2.30 p.m., Sachin Sharma, came to the business premises of the deceased and his father, situated in Churg Mohalla, Sujanpur. He was driving Motorcycle No. HP-22-7396 and asked the deceased to accompany him to the petrol pump at Alampur where he wanted to buy petrol for his Motorcycle. The deceased rode as a pillion rider. When they reached near the PWD Rest House, Sujanpur, Sachin lost control of the Motorcycle which resulted in the fatal accident. The Motorcycle fell down towards the river side and Ashit Gaurav received fatal injuries. The case pleaded is that he was shifted to the Community Health Centre, Sujanpur, for treatment where he died. He had sustained the injuries on his face and on his head.

3. The claimants pleaded that deceased was a graduate and had taken admission in Post Graduate Course while at the same time he was helping in the running a

small workshop preparing Dalia (porridge) and was earning about 2000 rupees per month.

4. The defence raised by the appellants herein was that the deceased was himself responsible for the accident as he was driving the Motorcycle at the time of the alleged accident. The Insurance Company resisted the petition on the ground that the driver of the ill-fated Motorcycle did not have a valid driving licence. On the pleadings of the parties, the learned Tribunal settled six issues. The most important and central issue being as to whether the death of Ashit Gaurav was attributable to rash and negligent driving of the Motorcycle by appellant Sachin, the learned Tribunal held in the affirmative and awarded compensation to the respondents-claimants herein.

5. Learned Counsel appearing for the appellant submits that the award cannot be sustained in law as the learned Tribunal has only considered the evidence of PW-5 who is an planted witness and his testimony is not worthy of credence. Even if his statement is read as a whole, it does not establish that the accident occurred because of the rash and negligent driving of appellant Sachin but the evidence clearly establishes that the deceased himself was driving the Motorcycle and responsible for the fatal injuries. He submits that he did not possess any valid driving licence and therefore, the appellant is not liable.

6. Issue No. 1, as settled by the learned Motor Accident Claims Tribunal, is as to whether the death of Ashit Gaurav was the result of rash and negligent driving of the Motorcycle by appellant No. 2 herein. To reach this conclusion, learned Tribunal has considered the evidence of PW-1, Suresh Paul (claimant), father of the deceased, who stated on oath that on 28.6.2001 at about 2.15 p.m. Pankaj Chaudhary son of Shri Ramesh Chaudhary called his son from the business premises and told him that Sachin asked the deceased to accompany him and at around 3.30 p.m. he was informed by his neighbourer that his son had met with an accident. He rushed to the hospital and on reaching there he was informed that his son is dead. In cross-examination, he has admitted that his son was a friend of Sachin and that the Motorcycle was owned by appellant No. 1, Sandeep Sharma. He was not an eye-witness to the accident and his son did not possess a valid driving licence. He denied any suggestion that the deceased was himself driving the Motorcycle.

7. PW-2, Narender Kumar, stated that on 28.6.2001 at about 2.30 p.m. he saw Sachin, who was also known as Rassu, driving the ill-fated Motorcycle and the deceased, whose nickname is Ashu, was sitting as a pillion rider. He admitted that the accident did not take place in his presence. PW-5 is Kashmir Singh son of Tara Chand, who is an eyewitness to the accident. He testifies that he knew the deceased and Sachin and that he had witnessed the accident. He saw Sachin driving the Motorcycle and the deceased was sitting as a pillion rider. The ill-fated Motorcycle struck with the drum on the roadside and thereafter fell into a deep pit. The labourers who were working on the road side rushed the deceased to the hospital. He has been cross-examined at length but there is nothing in the cross-

examination which would render his testimony as untrustworthy.

8. The learned Tribunal accordingly allowed the petition. Learned Counsel submits that the testimony of PW-5 is unworthy of credence and cannot be accepted. He has pointed out that in case PW-5 was an eyewitness he should have himself informed the police, rendered help to the injured and carried the deceased to the hospital for medical treatment. He also submits that his statement is not corroborated by any of the labourers who were working there by the roadside. Learned Counsel submits that this witness is a professional witness who appears in Court for consideration.

9. I cannot accept the submissions made by the learned Counsel appearing for the appellant. The evidence of PW-5 is clear and cogent, establishing only one fact and that is that the accident occurred in the manner in which it was pleaded. His cross-examination does not in any manner discredit his testimony. On the question of corroboration, there is no hard and fast rule that a fact needs to be corroborated by the testimony of the other witnesses. If the evidence of only one witness establishes a fact in issue, merely increasing the number of witnesses to establish the same fact over and over again is not the requirement of law. I do not find that qualitatively his evidence lacks probity. This witness is the Numberdar of the Village. He denied the suggestion that he is a professional witness in every case, but he has testified only in those cases relating to his area regarding which he has any familiarity with facts. This submission is, therefore, rejected.

10. Learned Counsel submits that the Court was in error in not considering the First Information Report Ex.RW-1 /A which clearly establishes that the deceased was himself driving the Motorcycle. He submits that RW-1, Shri Sandeep Sharma, appellant No. 2 herein, also corroborates the contents of the First Information Report. The testimony of RW-1 may be considered. His defence is that the Motorcycle was taken away by the deceased without his consent. He admits in his cross-examination that the keys of this Motorcycle were inside the house and nobody can be taken away the Motorcycle unless he has access to these keys. This version cannot be accepted and the statement made by this witness is nothing but a self-serving statement made only to save his skin. How and in what manner the deceased forced himself upon this witness and took away Motorcycle keys as also the vehicle has not been explained and it would be a farcical to build up a scenario where this witness has been made to part with the Motorcycle with force. Ex RW-1/A has been lodged by Sachin who says that he and the deceased were riding the Motorcycle though it was the deceased who was driving it. The learned Tribunal rightly holds that the story put forth that appellant No. 1 was forced to part with the Motorcycle cannot be believed. Learned Counsel appearing for the appellant submits that this First Information Report was later on cancelled as untraced and in these circumstances, the conclusion drawn by the learned Tribunal to corroborate the manner in which the accident occurred, cannot be sustained.

11. It is by now well settled that evidence in criminal proceedings cannot be used in civil proceedings. Even if the argument is accepted that the First Information Report is excluded, the evidence of PW-1 and PW-2, Shri Suresh Paul, father of the deceased, and Shri Narender Kumar, who was witness before the occurrence of the accident, clearly established the fact that it was Sachin who had called the deceased on the fateful day to take a ride with him on the Motorcycle and it was the deceased who was riding as a pillion rider. PW-5, Kashmir Singh, who is an eyewitness of the accident, has testified in clear terms that at the time when accident occurred it was Sachin who was driving the Motorcycle. As I have held, there is nothing on the record to discredit his testimony. It is also established on the record that neither Sachin nor the deceased possessed any valid driving licence, therefore, the question of fastening any liability on the Insurance Company does not arise at all.

12. In these circumstances, I hold that the Tribunal has rightly held that it was Sachin, appellant No. 2, who was driving the Motorcycle and the accident has occurred owing to his negligence. As such, I do not find any merit in this appeal, which is dismissed.

Cross-objection No. 247 of 2004.

13. The learned Motor Accident Claims Tribunal while considering the quantum of compensation/has rightly held that invoking the minimum wages earned, being paid at the relevant time, the deceased was not earning less than 2000 rupees per month. The learned Tribunal holds that he was contributing around 1300 rupees per month to the family. The award of Rs. 2,38,600 has rightly been made in favour of the claimants-respondents i.e. the parents being granted 90% of the compensation and 10% to the younger brother Amit Guarav. These Cross-objections are accordingly disposed of.

Both Cross-objections and the appeal are dismissed. There shall be no order as to costs.