
(2012) 03 DEL CK 0292
In the Delhi High Court
Case No : MAC. APP. 5 of 2011

Seema Devi and Another

APPELLANT

Vs

Pankaj Kumar and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 03 DEL CK 0292

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

Bench : Single Bench

Advocate : Jatinder Kumar, for the Appellant; Nitin Kalra, for R-1 and R-3, Mr. Manoj Kumar proxy counsel for R-2 and Mr. K.L. Nandwani, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellants who are the legal representatives of the deceased Deepak impugns the judgment dated 01.09.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the Claim Petition filed by them was dismissed on the ground that the Appellants failed to prove any negligence on the part of the driver of the two wheeler No. DL-8SS-2392, the First Respondent with which the accident occurred. During inquiry before the Claims Tribunal, the Appellants examined PW-2 Lalit Kumar, a neighbour of the deceased, who claimed himself to be an eye witness to the accident. The Claims Tribunal rejected his testimony on the ground that he was a planted witness. It took the view that the negligence on the part of the first Respondent was not proved.

2. There is no dispute about the proposition of law that in a Claim Petition u/s 166 of the Motor Vehicles Act (the Act), negligence is required to be proved on the basis of test of preponderance of probability. It is also true that irrespective of filing of the FIR against the deceased Deepak that he was responsible for the accident, the Appellants could prove before the Claims Tribunal that the accident

was caused on account of rash and negligent driving of the first Respondent.

3. It is admitted case of the parties that at the time of the accident the first Respondent was going ahead on his two wheeler scooter No. DL-8SS-2392 while the deceased was behind him on his motor cycle No. DL-5SV-2346. The Claims Tribunal dealt with the testimony of PW-2 Lalit Kumar and the issue of negligence in Paras 23 to 37 which are extracted hereunder:-

(23) PW2 has been projected by the petitioners as an eye witness of the incident. He has deposed that on 06.09.2008 at about 12.30 pm, he was going on his motorcycle bearing registration number DL 7SW 1236. When he reached in front of Siri Hans Satsang Bhawan, near Flyover, Punjabi Bagh, he saw one motorcycle bearing registration number DL 5SU 2346 was going ahead and a scooter bearing registration number DL 8SS 2392/Bajaj Chetak was going ahead of the motorcycle. The scooter driver while getting down from the Ring Road Flyover tried to take out his mobile while driving the scooter lost balance and the scooter was driven in a zig zag manner for a few seconds. In the meanwhile, the motorcycle bearing registration number DL 5SU 2346 which was in the process of overtaking the scooter at the relevant time, was hit due to application of sudden brake by the driver of the scooter, the front wheel of the motorcycle touched the rear right portion of the scooter and consequently the driver of the motorcycle and the occupants of the scooter fell down and sustained injuries. PW2 stopped his motorcycle on the side of the road and found that the driver of the motorcycle was his neighbour. He called the PCR from his mobile phone on dialing 100 number and after a few minutes the PCR arrived and removed the injured to the hospital. In his cross examination, PW2 has deposed that on the day of incident he was going from Lawrence Road towards Badarpur. Motorcycle being driven by deceased Mr. Deepak was at a speed of 40 to 50 km per hour. He cannot tell the speed of the scooter going ahead of the motorcycle of Deepak. He has admitted to be correct that when the motorcycle was about to overtake the scooter, the speed of the motorcycle was more than that of the scooter.

(24) It is not in dispute that Mr. Lalit Kumar is the neighbour of the petitioners. He is claimed to be an eye witness of the accident but from his evidence it appears that he was not present at the spot as he was not even able to depose regarding the speed of the scooter going ahead of the motor cycle of the deceased Mr. Deepak. I also find that Mr. Lalit Kumar has not been cited as a witness in a criminal case pertaining to FIR number 340/2008 PS Punjabi Bagh in which the name of the accused is mentioned as Mr. Deepak i. e. the deceased.

(25) PW2 has claimed that he had called the PCR from his mobile. However nothing is shown to substantiate this claim. I find on perusal of the criminal case record, Ex. PW1/10 that there are two DD annexed i.e DD No. 32B and DD No. 3A and both do not mention about PW2 informing the PCR about the accident. PW2 has also not disclosed his mobile phone number nor produced the relevant call details record. He has also not produced the registration certificate of the motorcycle which allegedly he was driving when he allegedly witnessed the

accident. These facts make the version of PW2 unbelievable.

(26) It has been argued that a complaint had been made by the petitioners against the IO of the criminal case addressed to the DCP, West that the IO has deliberately not made Mr. Lalit Kumar a witness. However, I am of the considered opinion that this complaint appears to have been made after due deliberation and consultation as the date of accident is 06.09.2008 in which the deceased Mr. Deepak had died on 07.09.2008 due to the fatal injuries sustained by him in the accident while the complaint has been made on 21.12.2009, as is clear from the evidence of PW5 HC Jagbir Singh who has brought and proved the diary register pertaining to the receipt of the complaint on 21.12.2009. PW6 has deposed that the complaint dated 08.11.2009 was received in the office of the DCP, West on 22.12.2009. I find that the present claim petition had been filed by the petitioners before the Court on 17.12.2008 and the complaint had been made, even if it is assumed on 08.11.2009, then after one year and two months of the accident and after 11 months of filing of the present claim petition. It appears to be a manipulated move in order fill up the lacuna which may have been left in the claim petition as the issues were framed on 19.8.2009 wherein the negligence of the driver of the scooter was ordered as one of the issues.

(27) It has been argued that the petitioners could not make the complaint earlier as they were under depression. However, I am of the considered opinion that however moving and emotional the argument may be but the version of the petitioners being under depression does not appear to be believable as the petitioners were able to file the claim petition on 12.12.2008 i.e. after about three months of the death of Mr. Deepak but they preferred to wait till more than one year to make the complaint against the IO of the criminal case. Even otherwise, nothing has been brought on the record which could show that some action against the IO was taken by the DCP, West on the complaint and Mr. Lalit Kumar was associated as a witness. Apparently, Mr. Lalit Kumar has himself not made any complaint to the senior police officers or the Court or any Government Authority of his being not made a witness despite being available at the spot.

(28) Therefore, it appears that Mr. Lalit Kumar has been planted as an eye witness in the present case in an attempt to prove the negligence of the driver of the offending scooter and his evidence does not inspire any confidence.

(29) Even if this fact is ignored, then also from the evidence of PW2 the negligence of respondent number 1 is not proved as it is clear from the evidence of PW2 that the motor cycle was about to over take the scooter and the speed of the motor cycle was 40 to 50 kms per hour and more than the scooter when the accident had occurred which shows that it was the responsibility of the motor cyclist to see that no accident occurs while over taking a vehicle which is ahead of the motor cycle as it cannot be expected from the driver of the scooter, which is ahead of the motor cycle, to see what was happening behind him. The focus of the scooterist would be on the road ahead of him and not behind him and therefore, it was the responsibility and the duty of the motor cyclist to take all

necessary precautions while over taking the scooter.

(30) I also find on the perusal of the certified copy of the criminal case record i. e. Ex. PW1/10 collectively that the name of the accused i. e. the person responsible for accident is mentioned as Mr. Deepak Kumar, the deceased.

(31) I also find on perusal of the mechanical inspection reports of the offending vehicle that the scooter as well as the motor cycle of the deceased that the scooter has been damaged from the rear side as rear number plate has been damaged from the right side as the right side body scratched and dented, the engine cover is dented scratched and dislocated, engine fan system and fan cover is dented. The mechanical inspection of the motor cycle shows that it has been damaged from the front side as the front wheel tyre is scratched from left side body parts scratched.

(32) The mechanical inspection reports of both the vehicles show that the scooter from the rear right side has been damaged and the motor cycle has been damaged from the front left side which also clearly proves that the deceased was trying to over take the scooter when the accident had occurred and therefore, the responsibility was of the motor cyclist not to be negligent and to take all the necessary precautions while over taking the scooter which was ahead of him.

(33) Nothing is shown which could indicate that it was the respondent number 1 scooterist who was at fault or was rash and negligent in driving the scooter due to which accident had occurred.

(34) Even R1W1 has admitted that his scooter and the motorcycle collided and the motorcycle's front tyre struck the rear right side of his scooter.

(35) It would also not to be out of place that as per the evidence of respondent number 2, the deceased had taken the motor cycle without his permission, which also shows the casual and careless attitude of the deceased.

(36) Proceedings under the MV Act are not akin to proceedings in a civil Court and hence strict rules of evidence are not required to be followed in this regard. Certified copies of the criminal Court record such as FIR etc. are sufficient proof to reach the conclusion that driver was negligent. It is not necessary for the petition to prove rashness and negligence of the driver/respondent where there is no eye witness as the same can be proved by documents such as the FIR to show that his vehicle was involved in the accident. (Reliance can be placed upon the judgment of the Delhi High Court in the case reported as Union of India (UOI) Vs. Rajo and Others,

(37) Therefore, in view of the foregoing reasons, especially the fact that in the criminal case of accident, after due investigation, it has been concluded that the deceased Mr. Deepak was at fault and as there is nothing on the record to show that respondent number was rash and negligent in driving his scooter, I am of the considered opinion that the petitioners have failed to prove the accident in which Mr. Deepak @ Deepak Kumar has expired and was caused due to the rash

and negligent driving of scooter bearing no. DL 8SS 2392 by its driver i.e. respondent number 1.

4. I would agree with the conclusion reached by the Claims Tribunal except that filing of the criminal case was sufficient to prove deceased's negligence. Dehors the criminal case a Claimant can prove the negligence in the Civil Court or the Claims Tribunal.

5. It is claimed by the Appellants as also by PW-2 Lalit Kumar that he was a witness to the accident. Deceased Deepak was immediately removed to Sanjay Gandhi Memorial Hospital, Mangol Puri. A perusal of the MLC prepared in the hospital immediately on arrival of the deceased who was alive at that time shows that he was taken to the hospital by ASI Mehtab Singh. There is no mention of PW-2 in the MLC. Had PW-2 seen the accident, he would have accompanied Deepak to the Hospital and his name would have been recorded in the MLC.

6. The Claims Tribunal noticed that this accident took place on 06.09.2008 and the complaint to the DCP was made on 21.12.2009 i.e. more than 15 months after the accident and much after filing of the Claim Petition before the Claims Tribunal.

7. It is urged by the Learned Counsel for the Appellants that the first Respondent was responsible for causing accident as he was talking on mobile phone while driving a two wheeler scooter in a zig zag manner which resulted into an accident. This is not borne out from PW-2's testimony. PW-2 admitted in cross-examination that when the motor cycle was about to overtake the scooter, the speed of the motor cycle was more than that of the scooter. The Claims Tribunal also observed that the damages on the rear side of the scooter and the front side of the motor cycle also revealed that the accident was caused by the motor cycle. It is admitted that the accident took place while going down on Punjabi Bagh flyover. It is thus apparent that the deceased Deepak lost control of the motor cycle while driving down the flyover and dashed against the two wheeler scooter and resulted into an accident. The reasoning given by the Claims Tribunal cannot be faulted. The First Respondent cannot be said to be negligent in driving the two wheeler scooter.

8. In the circumstances, there is no ground to interfere in the impugned judgment. The Appeal is dismissed being devoid of any merit.