

(2022) 12 DEL CK 0044

In the Delhi High Court

Case No : MAC.APP. No. 705 Of 2018, Civil Miscellaneous Application No. 34778, 34779 Of 2021

Shri Ram General Insurance Co Ltd

APPELLANT

Vs

Aditya Kishore Chaturvedi & Ors.

RESPONDENT

Date of Decision : 07-12-2022

Acts Referred:

Motor Vehicle Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 337, 338

Citation : (2022) 12 DEL CK 0044

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Sunanda Nimisha, J.P. Mishra, Vishal Mishra, Anita Mishra, Kalpana

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. The present appeal under section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant against the Impugned Award dated 03.02.2018 passed by the Ld. Tribunal whereby the Ld. Tribunal has allowed the claim petition.

2. In brief, the facts of the case are that on 12.10.2011, respondent No. 1 was going to his house from his place of work situated at Plot No. 324, Udyog Vihar, Phase-IV, Gurgaon, Haryana on foot. At about 7:15 a.m. when respondent No. 1 reached Gurgaon border near petrol pump, bus bearing No. DL1PC 1685 came from Delhi side being driven in a rash and negligent manner at very high speed and while overtaking respondent No. 1 hit him, as a result of which respondent No. 1 fell down and sustained multiple injuries. An FIR No. 137/2012, under section 279/337/338 IPC was registered at PS Udyog Vihar.

3. On the basis of the pleadings of the parties, the Ld. Tribunal framed the following issues:

"(i) Whether the petitioner had suffered grievous injuries in road traffic accident which took place on 12.10.2011 within the jurisdiction of PS: Udyog Vihar, Gurgaon due to rash and negligent driving of the vehicle bearing registration No. DL1 PC 1685 by respondent No. 1?

(ii) Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?

(iii) Relief?"

4. I have heard the Ld. counsel for the appellant and Ld. counsel for the respondent No. 1 and perused the records of this case.

5. At the outset, it is submitted by the Ld. counsel for the appellant that the respondent No. 1 has miserably failed to prove the involvement of alleged offending vehicle bearing No. DL1PC1685. He further submitted that the first document which was prepared after the accident is the MLC dated 12.10.2011 in which it is clearly mentioned that the respondent No. 1 was on bicycle and was hit by a two wheeler. He further submitted that there is a delay of more than one year in the registration of the FIR and there is no explanation for such delay. He further submitted that according to the respondent No. 1 the vehicle was seized at the spot whereas the vehicle was seized after one year and one month of the accident i.e. on 09.11.2012. Ld. counsel for the appellant has relied upon the judgment of the Apex Court titled as Oriental Insurance Co. Ltd. Vs. Premlata Shukla and others : 2007(3) RCR (Civil) 301 to contend that to maintain a petition under Section 166 of the Motor Vehicles Act, proof of rashness and negligence on the part of the driver of the vehicle is sine qua non. It is further submitted by the Ld. counsel for the appellant that in the present case, neither involvement stands established nor negligence. He further submitted that the testimony of PW 1 is contradictory in nature.

6. On the other hand, it is submitted by the Ld. counsel for the respondent No. 1 that there is no infirmity in the impugned award. It is further submitted that delay in lodging the FIR is not fatal to the case of the respondent No. 1. It is further submitted by the Ld. counsel for the respondent No. 1 that the standard of proof in accident claim matters is much lower than i.e. required in criminal or civil matters.

7. As far as the contention of the Ld. counsel for the respondent No. 1 that the standard of proof in accident claim matters is much lower as compared to criminal or civil matters, there is no dispute in this regard and these matters are to be decided on the basis of preponderance of probabilities, however, that does not mean that the Court has to shut its eyes on the facts, evidence and documents placed on record and just because an accident has happened or the FIR is registered the claim petition is to be allowed.

8. The main issue in this appeal is Issue No. 1 and the onus to prove this issue was on the respondent No. 1. In order to prove this issue and in support of his

claim, respondent No. 1 examined himself as PW 1 before the Tribunal. PW 1 in his examination in chief deposed that on 12.10.2011 he was going to his house from his work place and at about 7:15 a.m. when he reached Gurgaon Border near petrol pump, offending vehicle came at a very high speed and hit him while overtaking him as a result of which he fell down and sustained multiple injuries.

9. PW 1 was cross examined and in his cross examination he admitted that he had not noticed the bus number at the time of the accident and he further stated that the bus was seized at the spot and denied the suggestion that no accident has taken place with the bus in question and further denied that he has falsely deposed about the involvement of the bus bearing No. DL1PC1685.

10. Now coming to the facts as mentioned in the claim petition, respondent No. 1 had filed his claim petition on 08.02.2013 mentioning therein that at the time when the accident took place he was on foot. There is a saying that a man may lie but circumstances don't. Now I proceed to look at the MLC of respondent No. 1 which was prepared at Paras Hospital, Gurgaon. The perusal of this document shows that the patient i.e. respondent No. 1 was on bicycle and was hit by a two wheeler on 12.10.2011 at 7:00 a.m. The reading of this MLC shows that the facts of the case were given by the injured himself as the MLC does not note the name of any other person. This MLC further notes that the patient i.e. respondent No. 1 was conscious oriented and not unconscious.

11. This MLC was prepared on 12.10.2011, at about 1:15 p.m. and it has been nowhere mentioned in this MLC that the accident took place with a bus and there was no reason for the doctor preparing the MLC to record anything wrongly. Now in the claim petition respondent No. 1 stated that he was going on foot at the time of the accident whereas, in the hospital it was revealed to the treating doctor that he was on bicycle and was hit by a two wheeler. When the respondent No. 1 appeared as PW 1, he categorically stated in his cross examination that the offending vehicle was seized at the spot but despite that he stated in his cross examination that he had not noticed the number of the offending vehicle.

12. It is pertinent to note here that the seizure memo of the bus bearing No. DL1PC 1685 is dated 09.11.2012 which goes to show that the bus was seized after more than one year of the accident which is totally contrary to the testimony of PW 1 wherein he says that the offending bus was seized at the spot. It has also been vehemently argued by the Ld. counsel for the appellant that there is a delay of more than one year in registering the FIR in which the number of the bus has been mentioned without any basis and it is not understood as to how this number came within the knowledge of the injured respondent No. 1.

13. No doubt, delay in lodging of the FIR is not always fatal in each and every case and there is no straight jacket formula to determine as to where the delay is fatal or not, it depends on the facts and circumstances of each case. In his cross examination PW 1 has categorically stated that he had not noted down the

number of the offending bus but somehow he has mentioned the number of the bus as in the FIR to be the offending vehicle which caused the accident.

14. The Ld. Tribunal while deciding Issue No. 1 made the following observations:

"(i) PW 1 in his examination-in-chief categorically deposed that on 12.10.2011 he was going to his house from his work place. At about 7.15 am when he reached Gurgaon border near petrol pump, offending bus came at very high speed in a rash and negligent manner from Delhi side and hit him while overtaking him. Consequently, he fell down and sustained multiple injuries. Though, in his cross examination, he admitted that he did not notice the bus number at the time of accident, but deposed that bus was seized at the spot. He also testified that it was single road and he had seen the bus from the distance of 500 meters. He denied the suggestion that no accident had taken place with this bus or he had falsely implicated the bus.

(ii) No doubt, there is delay in registration of the FIR but delay is not fatal in this case as it is undisputed fact that on the basis of complaint lodged by the injured, police had not only registered the FIR but also prosecuted the respondent no. 1. It is also well settled law that the standard of proof in accident claim matters is much lower than that is required in criminal or civil matters."

15. The findings given on this issue in favour of the respondent No. 1 are mainly on the ground that since the complaint was lodged by the injured with the police and the police has registered the FIR, therefore, the Ld. Tribunal returned the findings that the testimony of PW 1 is sufficient to hold that the accident had taken place due to rash and negligent driving of the offending vehicle. The findings given on this issue by the Ld. Tribunal are totally bereft of any details and simply because FIR has been registered and prosecution has been launched, the Ld Tribunal has without any basis and cogent reasoning given the findings that the driver of the alleged offending vehicle was rash and negligent while driving the offending vehicle.

16. Therefore, in these circumstances and in view of the discussions mentioned hereinabove and looking into the testimony of PW 1 and the documents i.e. the MLC of the injured respondent No. 1 and seizure memo of the offending vehicle, I am of the considered opinion, that the Ld. Tribunal has erred in deciding Issue No. 1 in favour of respondent No. 1. Consequently, Issue No. 1 is decided in favour of the appellant and against the respondent No. 1. The appeal is accordingly allowed and the impugned award is set aside.

17. Trial Court Record be sent back alongwith the copy of this judgment.

18. The appeal is disposed of accordingly. Pending applications, if any, are also disposed of.