
(2011) 07 DEL CK 0350
In the Delhi High Court
Case No : MAC Appeal No. 94 of 2010

Smt. Madhu Bala and Others	Vs	APPELLANT
Sh. Surender Kumar and Others		RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 07 DEL CK 0350

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : S.N. Parashar, for the Appellant; Pankaj Seth, for the Respondent

Judgement

Indermeet Kaur, J.—This appeal has impugned the dated 11.11.2009 whereby the claim of the claimants had been rejected; issue No. 1 had been decided against the claimants; on the evidence which had been led before the Tribunal which included testimony of PW 2, the court had held that the Petitioner had failed to prove that Car No. DL-4CS-1022 was involved in the accident which was being driven in a rash and negligent manner pursuant to which it had hit Narender Kumar and because of which he had died. No. compensation was accordingly awarded in favour of the claimants.

2. Appeal has been filed against the impugned judgment. Learned Counsel for the Appellants has pointed out that PW 2 was eye witness and his testimony had been wrongly ignored by the Trial Court. He was the brother of the victim and the learned Tribunal had placed emphasis upon the certain submissions which have been elicited in his cross-examination but the entirety of the evidence in the correct perspective has not been considered. It is pointed that the criminal record i.e. FIR which had been lodged against the driver and the owner of the offending vehicle, MLC prepared on the same of the victim Narender Kumar; his postmortem report; the charge-sheet were all documents which had been filed before the Tribunal which had not been considered. They were illegally ignored. Learned Counsel for the Appellant has placed reliance upon a judgment of the

Apex Court reported in 2009 (5) Scale 706 titled as Bimla Devi and Ors. v. Himachal Road Transport Corpn. and Ors. to substantiate his submission that the claimants in a petition u/s 166 of the Motor Vehicles Act (MVA) have to establish their case on the touchstone of preponderance of probabilities; standard of proof beyond reasonable doubt cannot be applied. Reliance has also been placed on National Insurance Company Ltd. Vs. Smt. Pushpa Rana and Others, to substantiate the submission for certified copy of the record of the criminal record that is FIR, recovery and medical inspection report are documents which can be sufficient proof to conclude that the driver was negligent. There is No. dispute to this fact.

The record of the criminal proceedings i.e. the FIR, the statement recorded by the Investigating Officer of the eye witnesses which include that the PW-2 (the brother of the victim) and PW Praveen and Devender who had taken the deceased to the hospital were recorded on the same day of the accident i.e. 02.11.2006. The said record has been perused. The MLC of the Victim Narender Kumar also shows that he had been taken to the hospital by Parveen, his MLC also mentions the name of Davender as the other person who had brought the victim to the hospital. Statements of Parveen and Davender had recorded by the Investigating Officer on the same day. Both Praveen and Davender in their statement also state that while they were coming from Madhuban Chowk on the left side of outer ring road and when reached at the C Block, Red Light outer ring road, Saraswati Vihar, the offending vehicle santro Car No. DL-4CS-1022 came from Madhuban Chowk/back side in a rash and negligent manner and hit the deceased from the back side; the brother of the injured asked them to remove the injured to the hospital; they had taken him to the Baba Saheb Ambedkar Hospital. This version of Parveen and Davender is in conformity with the version of PW-2 (Arvind Alag) who was brother of the deceased who was an eye witness, he had also in his statement recorded before the IO on 02.11.2006 stated that his brother had suffered the accident because of negligence of the driver of the aforementioned Santro Car; he had asked passerby to remove his brother to the hospital Baba Saheb Ambedkar. The postmortem had also noted that the death of Narender was because of the impact of the accident. This documentary evidence had been illegally ignored by the Tribunal. Testimony of PW-2 was in conformity that this documentary evidence. Testimony of PW-2 had been rejected by the Tribunal primarily for the reason that it is difficult to believe that an eye witness brother would have gone to the house to fetch money first and would have asked passerby to remove his brother to the hospital; this is an unnatural behaviour. However, keeping in view the entire evidence on record which includes version of PW-2 as also the documentary evidence (discussed supra), it is clear that it has been established that the death of Narender Kumar was caused because of the rash and negligent act of the driver of the offending Santro Car. The claim of the claimants could not have been rejected on this account. This is a fit case for remand. Appeal be remanded back to the Tribunal to calculate the compensation which is awarded in favour of the claimant.

3. The parties are directed to appear before the Tribunal on 02.08.2011.