

(1999) 11 DEL CK 0111

In the Delhi High Court

Smt. Savitri Khanna and Others

APPELLANT

Vs

Sushil Jain and Others

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Citation : (2000) 1 ACC 295

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Judgement

M.K. Sharma, J.—This appeal is directed against the judgment and order dated 18.12.1985 passed by the Judge, Motor Accident Claims Tribunal dismissing the claim petition of the appellants on the ground that the appellants had failed to prove the negligence on the part of the respondents.

2. It was stated in the claim petition filed that on 9.11.1981, the deceased Anil Khanna while going on his two-wheeler scooter was hit from behind near R.K. Puram at about 10.00 a.m. by a scooter which was being driven by the respondent No. 1 in a rash and negligent manner. As a consequent of the said accident, the deceased was thrown on the road and received head injuries consequent to which he died on way to hospital. The appellants herein filed the aforesaid claim petition before the Tribunal seeking for just and fair compensation. It was stated in the said claim petition that the deceased at the time of his death was a young man of 26 years of age and he was in the last year of Chartered Accountant course and was offered the work of auditing and was being paid handsomely by his company and that he was earning about Rs. 2,000/- per month during that period. It was also alleged that the deceased used to give the appellants about Rs. 1,000/- per month for their needs. Accordingly, they claimed Rs. five lakhs towards pain, suffering and agony and general damages and Rs. 2,000/- towards costs of damages.

3. The respondents contested the claim petition and, filed their written statement. On the basis of the pleadings, six issues were framed by the Tribunal. On behalf of the claimants seven witnesses were examined and documentary

evidence was also led before; the Court, whereas the respondents examined only one witness. After closure of the trial, the Tribunal heard the arguments advanced by the Counsel for the parties and thereafter by the aforesaid impugned judgment and order dismissed the claim petition on the ground that the appellants had failed to prove the act of negligence on the part of the respondent and, Therefore, they were not entitled to any compensation. While coming to the aforesaid conclusion, the Tribunal took notice of the evidence on record particularly the evidence of PW 4 who was stated to be eye witness of the occurrence and also the vehicle inspection report marked as Ex. PW 1/A and on consideration thereof held that the evidence of PW 4 is not trustworthy and, Therefore, was not reliable and appeared to be a made-up witness for the purpose of the case. He also held that the Criminal Court also found P W 4 as not reliable and, Therefore, his testimony could not be accepted. He also held that the vehicle inspection report also indicates that there was no damage on the back side of the scooter of the deceased.

Being aggrieved by the aforesaid judgment and order, the present appeal has been preferred by the appellants which was argued before me. During the course of argument learned Counsel for the appellants was present but none appeared for the respondents. However, I perused the records of the case carefully in order to appreciate the contention of the Counsel for the appellant. The Tribunal rejected the vehicle inspection report which was proved as Ex. PW 1/A holding that there was no damage on the back side of the scooter of the deceased. In order to appreciate the conclusion arrived at by the Tribunal I have looked into the said report myself and on perusal thereof, I find that there exists two vehicle inspection reports, one exhibited as Ex. PW 1/A and other PW 1/B. Two-wheeler scooter with the registration No. DHJ-4718 was the scooter which was being driven by the deceased at the time of accident. The vehicle inspection report in respect of the said scooter is Ex. PW 1/B. The damage shown in the said report is:

1. Slight scratches on the head light.
2. Showcase from left side damaged.
3. Dickey dented and pushed inside.
4. Engine showcase dented slightly.
5. Silencer damaged.

The other two wheeler scooter bearing registration No. DHQ-4391 is the scooter which was involved in the accident and was driven by the respondent No. 1. The damages to the said vehicle is of the following nature:

1. Front bumper damaged.
2. Head-light dented.
3. Hand Brake broken.

4. Engine Side Boynet slightly dented.

5. Right and left show case petty dented.

4. The aforesaid damages caused to the two scooters clearly throw light the way the accident had occurred. The hand-brakes of the scooter driven by the respondent No. 1 is shown to have broken in the said vehicle inspection report. The allegation of the claimants in the claim petition was that the said scooter hit the deceased from the back side, as a result of which the deceased fell down on the road and received grievous injuries, as a result of which he died on way to the hospital. Dickey of the scooter driven by the deceased is shown damaged and also pushed inside. Engine showcase of the scooter driven by the deceased was also damaged slightly and the silencer is also shown to be damaged. These damages caused to the said two-wheeler scooter driven by the deceased indicate that the scooter driven by the respondent No. 1 hit the scooter driven by the deceased from behind on the side of the dickey which was pushed inside, consequent to which the deceased fell down on the road and received grave injuries and died on way to hospital. PW 4 has stated in the categorical terms in his deposition that the scooter was driven by respondent No. 1 in a rash and negligent manner. The said testimony of the witness PW 4 was rejected by the Tribunal holding him to be not trustworthy and reliable and appeared to be made-up witness for the purpose of the case. He had arrived at the aforesaid conclusion because of the fact that the said witness did not remember the registration number of the vehicle nor he remembered the telephone number to whom he informed about the accident and also because his testimony was rejected by the Criminal Court.

5. The findings and observations of the Criminal Court in respect of a witness cannot be said to be binding in a claim case, for the prosecution in a criminal case has to prove beyond reasonable doubt and the burden always rests on the prosecution; whereas the preponderance of evidence decides a claim case. In this connection, reference, may be made to the decision of a Division Bench of M.P. High Court in Sri Mahadeb Roy Vs. Sikiha Das and Others, wherein it was held that acquittal of driver of the offending bus in criminal trial has no relevance in adjudication of claim application. Taking notice of the evidence of PW 4 as also the evidence disclosed from the documentary evidence of Exs. PW 1/A and PW 1/B, it is apparent that the deceased died as a result of the aforesaid accident which occurred due to rash and negligent driving of the scooter driven by respondent No. 1. However, at the time of the death, the deceased was still a student and was yet to clear the last year of Chartered Accountant Course. However, at that stage he was alleged to have been earning Rs. 2,000/- per month. There is, however, no clear evidence in respect of the aforesaid statement that the earning of the deceased was Rs. 2,000/-. It, however, appears from the records that he was a partner in a company under the name and style of M/s. R.S. Suri and Associates and got the audit work from Punjab National Bank for an amount of Rs. 4,500/-. It has also come on record that the

deceased was giving to the appellants an amount of Rs. 1,000/- for their needs. Such evidence, however, does not prove conclusively monthly earning of the deceased at the time of his death. Rs. 4,500/- admittedly was not monthly income but one time payment. Handing over Rs. 1,000/- to the appellants was also one time payment and not regular payment. But it has come in evidence that the deceased had become a partner in a firm and started getting work and was in the final year of Chartered Accountancy Course.

6. Taking an overall view of the matter and also taking notice of the fact that the accident took place in the year 1981, an amount of Rs. two lacs lumpsum would be sufficient and could be considered as just and fair compensation for the death of the deceased which is accordingly awarded herein. In addition the appellants shall be entitled to interest @ 12% p.a. from the date of the accident till realisation. The respondents are also held to be severally and jointly liable for the payment.