

(1976) 12 DEL CK 0023
In the Delhi High Court
Case No : F.A.O. 3 of 1970

Union Cooperative Insurance Society Ltd.	APPELLANT
Vs	
Rama Nand and Another	RESPONDENT

Date of Decision : 14-12-1976

Acts Referred:

Citation : (1977) ACJ 82

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : G.R. Chopra, for the Appellant;

Final Decision : Dismissed

Judgement

B.C. Misra, J.—This order will dispose of two appeals, one (FAO 3 of 1970) filed by the Insurance Company, and the other (FAO 6 of 1970) filed by Rama Nand, claimant, and both arise out of the award of the Motor Accidents Claims Tribunal, dated 9th June, 1969 by which it has awarded a compensation of Rs. 7,622/- to the contesting Respondent against the Insurance Company and the owner and driver of the vehicle.

2. The material facts of the case are that the claimant, Rama Nand, was a police constable, who on the material date, i.e. 22nd June, 1965, was tiding a cycle proceeding from Tis Hazari Courts towards old Police Lines and when after giving a hand-signal to enter the Police Lines Gate on Rajpur Road, the claimant was near the gate and the front wheel of the cycle was on the foot-path and the rear on the road, the offending scooter came at a fast speed and caused the accident. The offending scooter, DLZ 8642, (driven by Obinder Singh,) struck the cycle against its rear wheel, as a result of which Rama Nand, claimant, received injuries. After the first aid, he was taken to the Irwin Hospital where an operation was performed on 24th June, 1965 and he was discharged on 7th July, 1965. Thereafter he still felt pain on the left hip joint an on 13th October, 1966 a second operation was performed and he was finally discharged on 27th October,

1966 In the opinion of the Doctor he had suffered permanent disability by slight shortening of his leg on account of the accident as a result of which he was given clerical duties in the police establishment.

3. On 19th August, 1965 the contesting Respondent filed a claim before the Motor Accidents Claims Tribunal and claimed a sum of Rs. 20,000/- on account of damages for rash and negligent act of the driver of the scooter resulting in the injury and permanent disability. The Insurance Company, the owner and the driver of the vehicle filed the written statements contesting the allegations of the claimant and in particular the main defence raised was of contributory negligence on the part of the injured. It is significant that neither the Appellant Company, nor the other contestants viz, the owner and driver of the vehicle produced any evidence. Even the driver who was involved in the accident was not examined, however, he had been prosecuted and convicted and bound down for a period of three months. The court below after appraising the evidence produced in the file came to the conclusion that the accident occurred due to rash and negligent driving of the scooter by the alleged driver and there was no contributory negligence on the part of the injured. It, therefore, awarded a sum of Rs. 7,622/- as damages. The award was, however, made against the Insurance Company, owner and driver of the vehicle jointly and severally. Feeling aggrieved, the Insurance Company has filed this appeal for reversal of the judgment. Rama Nand, claimant, has also filed an appeal for enhancement of the compensation. Nobody has appeared on behalf of Rama Nand, claimant, either in the appeal of the Insurance Company or in his cross-appeal.

4. Mr. G.R. Chopra, Advocate for the Appellant, has raised the following contentions:

1. The claimant was guilty of contributory negligence and so was not entitled to any amount of compensation, or at least reduction of the amount of compensation was necessary.

2. In view of the evidence on record, the finding of the court below about the rash and negligent driving of the scooter is not correct; and 3. The amount of compensation must in any case be reduced.

5. The case of the claimant has been found established by Tribunal below by the statement of PW 4, Birbal, a Cobbler, who was sitting outside the Police Lines, and the statement of PW 6, Nirankar Sarup. A.S.I., who was present on duty at the Petrol Pump, besides the claimant himself as PW 8 The story given by PW 4, the principal eye witness is that the claimant, Rama Nand was at about 12.30 noon on 22nd June, 1965 going from Court side on cycle towards Police Lines and was proceeding on the correct side of the road and he gave a hand signal and wanted to go to the side of Police Lines towards this right hand side, the impact took place with the front wheel of the scooter which was coming from behind, as a result of which the claimant fell down and got injured. This statement has been supported by PW 6, Assistant Sub-Inspector of Police, who

has further stated that he was present on duty near the Petrol Pump and noticed the claimant coming on a cycle from Tis Hazari Court side and that he had given his signal indicating that he would take a turn towards the right hand side when the offending scooter came from behind at a fast speed and gave no horn and knocked down the claimant and the front wheel of the scooter struck the rear wheel of the cycle at its mudguard, as a result of which the claimant fell down on the road and got injuries. He further stated that the scooter driver looked for a while and then ran away. The claimant in his statement has given the same story. He has deposed that as he reached the Rajpur Gate of Old Police. Line, he gave a signal and he almost reached the gates of Police Line, when all of a sudden a motor cyclist came at a high speed and struck against the rear wheel of his cycle and knocked him down, as a result of which he suffered a fracture of thigh bone apart from other minor injuries and the scooterist did not stop and sped away. He further stated that he was removed to the Hospital by the A.S.I. present there. Nothing has been brought out in the cross-examination of these witnesses to cast a doubt on their veracity. The court below has been considerably impressed by the independent nature of the evidence given by the cobbler, PW 4. It also did not find any reason to disbelieve the statement of the A.S.I., PW6. The Tribunal, rightly found it established that the driver of the scooter was guilty of rash and negligent act resulting in the accident and injuries to the claimant.

6. Mr. Chopra wants to make out a case of contributory negligence. His first impression was that the scooter was coming from the opposite direction towards Tis Hazari Courts and was correctly on left side of road. But this impression is clearly erroneous. Firstly, this defence was not specifically put forward; and secondly, the witnesses were not cross-examined with regard to the side from which the scooter was coming. The evidence on record shows that the scooter came from behind and its front wheel struck the rear wheel of the cycle of the claimant. The cycle of the claimant had turned towards the right and the rear wheel of the cycle was on the road at the time of the impact. This clearly shows that this accident would not have occurred but for the rash and negligent driving of the scooter wrongly in the middle of the road.

7. It cannot be over-emphasised that on behalf of the Appellant company no evidence whatsoever was produced and even the driver of the scooter was not examined and nothing has been brought out in the cross-examination of the witnesses to suggest that the scooter was coming from the opposite side. If the scooter was coming from behind there is no doubt that the scooter driver was guilty of rash and negligent act in striking against the cycle of the claimant and causing his fall and injuries. In these circumstances no contributory negligence whatever has been established on the part of the claimant. The first contention of Mr. Chopra is, therefore, rejected.

8. So far as the second contention is concerned, the evidence on record amply proves negligent act on the part of the scooter driver and in discussing the first

contention of the learned Counsel in finding out the contributory negligence, I have considered the evidence produced on behalf of the claimant, which has been accepted by the court below, which I have no reason to doubt and I accept it. The rash and negligent act of the scooter driver is, therefore, fully established and the finding of the court below is correct and is affirmed.

9. Coming to the quantum of compensation, I find that the court below has awarded a sum of Rs. 947/- on account of loss of pay, Rs. 175/- on account of conveyance expense and Rs. 1,000/- on account of special diet. It has awarded Rs. 3,000/- as compensation for permanent disability and Rs. 2,500/- on account of, mental injury, making a total of Rs. 7,622/-. In the circumstances of the case, it does not appear that the award is in any way excessive. It appears to be perfectly just and proper. The appeal of the Insurance Company, therefore, fails. So far as the cross-appeal of the claimant is concerned, nothing has been urged in support of the same and it is also dismissed.

10. Mr. Chopra lastly submits that it may be clarified that the Insurance Company is liable to a guarantor. There is no doubt that the amount of compensation awarded must be paid by the driver of the vehicle, who actually caused the accident, and by his employer, who owned the vehicle as the driver was driving the vehicle with the permission of the owner which fact has not been denied and has been found established by the Tribunal below. The amount is, therefore, primarily liable to be paid by them, but the Insurance Company is liable to pay as the guarantor.

11. The above is only so far as the rights between the contestants are concerned. Nevertheless, so far as the claimant is concerned, he is entitled to recover the amount awarded from all the three, viz Gian Chand, owner, Obinder Singh, driver and the Insurance Company, jointly and severally without any distinction of the degree of the liability. As a result, the award of the Tribunal is affirmed and both the appeals are dismissed. In the circumstances of the case, there will be no order as to costs.