
(2008) 02 DEL CK 0014

In the Delhi High Court

Case No : MAC. App. No's. 416 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Bhushan Lal Khera and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0014

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sakshi Mittal, for the Appellant; Manjeet Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present order, the two appeals filed by the appellant bearing MAC. APP. Nos. 416/2004 and 425/2004 shall be disposed of.

2. Feeling aggrieved with the impugned award, the insurance company has assailed the findings of the Tribunal primarily on two grounds. First ground of challenge is that the Maruti car bearing registration No.DL-3CA-3432 which is alleged to be the offending vehicle was not involved in causing the accident. The second ground of challenge is that the respondents/claimants did not receive injuries on account of the said accident involving the said maruti car.

3. Brief summary of the facts to deal with the contentions raised by the rival parties are as under:

4. On 11.8.1994, at about 10.00 - 10.15 p.m., Mr. Bhushan Lal Khera was traveling with his wife Ms. Jeevan Asha Khera on his scooter bearing registration No. DL-3SD-8742 which was driven by Mr. Bhushan Lal Khera while his wife was sitting on its pillion seat. When he reached near Sainik Farm, Gate No. 2, one maruti car bearing registration No. DL-3CA-3432 hit their scooter. The said offending vehicle came from Saket which was driven by its driver in a rash and negligent manner. Consequent to the accident, Smt. Jeevan Asha Khera

sustained grievous injuries while there were no visible injuries sustained by Mr. Bhushan Lal Khera.

5. Ms. Sakshi Mittal, counsel appearing for the appellant contends that the said maruti car bearing registration No. DL-3CA-3432 was never involved in causing the alleged accident in question. Counsel for the appellant has drawn my attention to contradictory depositions made by Ms. Jeevan Asha Khera who had entered the witness box twice. She had firstly deposed on 28.5.2001 as PW 1 and in her deposition she stated that she along with her husband had started from their factory on their two wheeler scooter and they were going at a slow speed on the left side of the road. When they had reached at Sainik Farm near Gate No. 2, the maruti car bearing registration No. DL-3CA-3432 suddenly came on their side and dashed against their scooter. Consequent to the impact of the accident, her husband Bhushan Lal Khera lost balance and both of them fell down on the road. The said lady then, received certain injuries on her spine, head, jaw and other portions of her body while her husband sustained head injury and suffered a kind of permanent disability. As far as her statement goes, she was admitted in All India Institute of Medical Sciences, while her husband received treatment from Holy Family Hospital, Sehgal Neurological Research Institute, Kailash Colony and also from AIIMS as well. This very witness again deposed on 7.10.2002 and this time she took a stand that due to the accident her husband became unconscious and there was a lot of hue and cry at the accident site at the time of the accident, as a result of which public persons gathered at the site and one person with the name of Mr. Jagdish Prasad Sharma came to their help. Along with him, the matter was reported to the PCR at 100 number. The police thereupon took into custody the offending car and so also the driver of the said car Mr. C.L. Hora. The contention of counsel for the appellant is that there is apparent inconsistency between the two statements made by the same lady and, Therefore, the statements made by the said witness cannot inspire any confidence. Counsel also heavily placed reliance on DD entry No. 35 to contend that in the said DD entry, the said claimant had further taken a completely new stand by stating that she was not able to see the number of the vehicle which caused accident. Not only this contradiction but even the nature of the vehicle was also changed from maruti to gypsy. In this DD entry, she also told the police that she did not want any police action in the matter. On the basis of the said contradictory stand of Ms. Jeevan Asha Khera, counsel for the appellant contends that the said maruti vehicle insured with the appellant insurance company was not involved in the accident. On her second contention, counsel states that since the said maruti car was not involved in the accident, Therefore, it cannot be said that the respondents claimants had received any kind of injury in the accident. Counsel thus, states that in view of the said submissions made by her, the appellant insurance company cannot be held responsible to pay any compensation amount to the respondents.

6. Ms. Manjeet Chawla, counsel appearing for the respondent on the other hand, contends that four DD entries were made after the two wheeler scooter being

driven by Mr. Bhushan Lal Khera was hit by maruti car bearing registration No. DL-3CA-3432 due to rash and negligent driving of the driver of the said car Mr. C.L. Hora. First DD entry No. 17A was lodged with Police Station Malviya Nagar, DD entry No. 18 was recorded at Police Post Pushp Vihar, DD entry No. 21 was recorded at Police Post Pushp Vihar and DD entry No. 28 was recorded at Police Post Saket . Not only this letter dated 16.11.1996 was also written by Ms. Jeevan Asha Khera to the concerned DCP lodging complaint on the inaction of the police in not registering any FIR against the accused persons. Furthermore, the respondents claimants appeared in the witness box as their own witness and they also examined one Mr. Jagdish Prasad Sharma who was an eye-witness of the said accident. Counsel further contends that Ms. Jeevan Asha Khera was immediately admitted in All India Institute of Medical Sciences while, Mr. Bhushan Lal Khera got his treatment from Holy Family Hospital. The respondents claimants had also proved on record the disability certificate of Mr. Bhushan Lal Khera. Counsel for the respondent further contends that although there may be minor contradictions in the depositions made by Ms. Jeevan Asha Khera but at the same time, it cannot be said that no such accident had occurred on the place as four DD entries one after the other were recorded reporting the said accident. Counsel further contends that as regards DD entry No. 35, the same was never proved by the appellant on record as only copy thereof was produced. Counsel further contends that in the cross-examination of Ms. Jeevan Asha Khera, she had denied the suggestion of registration of any such DD entry. Counsel further contends that both the claimants had received injuries in the said accident and the factum of the accident as well as the injuries sustained by both of them were duly proved on record not only with the help of the said DD entries but through unrebutted testimonies of both the claimants supported by the testimony of an eye witness Mr. Jagdish Prasad Sharma and the medical records produced by them in support of the injuries sustained by them.

7. I have heard learned Counsel for the parties at considerable length and have perused the records.

8. It is a settled legal position that strict rules of evidence, procedural conundrums , niceties of law and technicalities have no place while trying compensation cases under the Motor Vehicles Act. Minor contradictions and incoherent statements made by Ms. Jeevan Asha Khera as referred to by the counsel for the appellant are not as weighty and substantial to disbelieve the factum of accident involving the offending Maruti vehicle. Whether the driver of the offending vehicle ran away from the spot or was immediately apprehended from the spot, it itself would not lead to this conclusion that the accident in question had not occurred, more particularly, when the same driver of the offending vehicle was handed over to the police. In the DD entry No. 21, it might have been reported that the driver fled from the spot of accident but this in itself would not lead to an inference that after recording of DD entry No. 21, the driver of the offending vehicle could not have been apprehended. DD No. 17A dated 11 August 1994 was the first recording in point of time at police station, Malviya

Nagar and thereafter, DD entry No. 18 was recorded and then DD entry No. 21 and lastly DD entry No. 28, where after a PCR Van had taken the injured persons to the hospital. It is thus apparent that 4 DD entries were recorded with regard to the occurrence of the said accident which is further supported by the letter written by Ms. Jeevan Asha Khera and the statement of eye witness Mr. Jagdeesh Prasad Sharma and Therefore, minor contradiction made by the appellant Ms. Jeevan Asha Khera can be easily overlooked. As regards DD entry No. 35 dated 12.08.1994, no reliance can be placed on the same as the said DD entry was not proved on record by the appellant. Even if the contents of the DD entry No. 35 are taken to be correct, the same cannot be termed as unusual as to avoid unnecessary harassment at the hands of police and due to pressure put up by the offender such request of not initiating police action are invariably made by the victims. It is further a matter of general practice that the police sometimes also try to resolve the matter by bringing the parties to enter into some compromise. Besides all this, the accident was duly witnessed by an independent witness Mr. Jagdeesh Prasad Sharma whose testimony remained unimpeached and unrebutted.

9. In the light of the above discussion, I do not find myself in agreement with the counsel for the appellant that the maruti car registration No. DL-3CA-3432 was not involved in the above accident. Both the husband and wife had received injuries in the said accident and were admitted in hospital. Medical treatment from the respective hospitals and medical record to this effect has been duly proved on record. The said contention of the counsel for the appellant is thus rejected. The second contention of the counsel for the appellant stating that the said victims had not received injuries in the said accident is also rejected.

10. In the light of the above discussion, there is no merit in the present appeals. The same are hereby dismissed.