IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No.421/2003

Smt. Sneh Lata & Others .....Appellant
! through : Mr.O.P.Goyal, Advocate

VERSUS

$ Shri Lalit Kumar & Anr. .....Respondents
^ through : Mr.S.N.Parashar, Adv. for R-1
Mr.Kamal Mehta, Adv. for R-2

% RESERVED ON: 10.01.2007

DATE OF DECISION: 29-01-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. On 24.1.87, deceased died in a road accident involving a scooter No.DEM-4984. The scooter in question was uninsured. Dependants of the deceased filed a claim petition under Section 92-A and 110-A, Motor Vehicles Act, 1939 before the Tribunal.

2. The accident was caused when scooter in question was hit by an unidentified truck. Unfortunately, there is

nothing on record to show the manner in which the accident had taken place.

3. Case of the claimants being before the Tribunal was that respondent no.1, Lalit Kumar, was the owner of the scooter and was driving the scooter and deceased was the pillion rider at the time of accident and that accident was caused due to rash and negligent driving by respondent no.1.

4. Respondent no. 1 denied the allegations made by the claimants and contended that deceased was driving the scooter and he was the pillion rider at the time of the accident and accident was caused by an unknown truck. He also denied being owner of scooter no. DEM-4984.

5. Later on, respondent no.2, Sudhir Dutta, was impleaded as a party on the allegation that he was the owner of the scooter.

6. In his defence, respondent no.2 stated that he was not the owner of the scooter in question, as on 23.9.86 he had sold the same to respondent no.1. He stated that thought sale letter and delivery letter relating to scooter were duly executed, same are untraceable. He admitted that registration certificate of the scooter stands in his name but

submitted that at the time of sale, respondent no.1 had undertaken to get the registration transferred in his name, but failed to do so. He contended that he should not be made liable for the default committed by the respondent no.1.

7. Vide order dated 29.11.1999, on pleadings of parties, following issues were framed:-

> "i) Whether respondent no.1 was driving the two wheeler scooter no. DEM-4984 and the deceased Sunil Kumar Gaur was the pillion rider when the accident in question took place?
>
> ii) If issue no. 1 is affirmed in affirmative, whether deceased Sunil Kumar died in this accident due to rash and negligent driving on part of respondent no.1 of this scooter?
>
> iii) Whether the accident was caused by an unknown truck as alleged by respondent no.1?
>
> iv) Whether the petitioners are entitled to any compensation? If so, to what amount and from whom?
>
> v) Relief."

8. For the first time in the written submissions submitted by claimants, it was prayed that claim petition be converted to one under Section 163-A, Motor Vehicles Act, 1988 and compensation as per Section 163-A be awarded to them. The said prayer was rejected by the Tribunal.

9. In support of their case, claimants examined PW-1 Smt.Sneh Lata, wife of the deceased, PW-2 Smt. Shyam Kumari Gaur, mother of the deceased, PW-3 Sh.K.S.Gaur, father of the deceased, PW-4 Rajesh Kumar, brother- in- law of the deceased and PW-5 R.S.Gill, Law Officer, Metal Forgings Pvt. Ltd. Respondent No.1 besides examining himself as R1W4, examined R1W1 Constable Subhash, R1W2 S. Mahto, Medical Record Technician, R.M.L. Hospital and R1W3 Constable Sanjay Kumar. Respondent No.2 only examined himself as R2W1.

10. Considering testimony of witnesses and other evidence on record, Tribunal held that claimants had failed to establish that respondent no.1 was driving the scooter DEM-4984 and deceased was pillion rider at the time of accident and that the accident was caused due to rash and negligent driving by respondent no.1.

11. Tribunal further noted that on basis of evidence on record, respondent no. 2 continued to be the owner of the scooter as his name admittedly continued in the records of RTO as owner, thus he was held liable to third party i.e. claimants and was directed to pay Rs.15,000/- to claimants

on the basis of no fault liability.

12. Aggrieved by the award, claimants have filed the present appeal seeking enhancement of the compensation. Prayer made in the appeal is that respondents be directed to pay to the claimants a compensation of Rs.3,00,000/- on the principle of 'Fault Liability'.

13. Thus in order to succeed in the appeal, it is necessary for the claimants to establish that respondent no.1 was driving the scooter and deceased was the pillion rider at the time of the accident and that the accident was caused due to rash and negligent driving by respondent no.1.

14. In support of aforesaid contention, counsel for the claimants relied upon testimony of PW-1, wife of deceased and PW-4, brother-in-law of deceased.

15. Relevant part of PW1's testimony relied upon by claimants as under:

> "On 24.1.87, my husband had left with R-1 from our residence in the evening on his two-wheeler scooter."

16. Relevant part of PW-4's testimony reads as under:

> "On 24.1.87, I had to go Bahadur Garh with Sunil Kumar (deceased) and Lalit Kumar (R-1). I met them at Peera Garhi Chowk. Lalit Kumar was driving a two-wheeler scooter and Sunil Kumar was pillion rider."

17. Counsel for the claimants submits that as PW-1 and PW-4 had testified to the fact that on the day of accident, they had seen that respondent no. 1 was driving the scooter and deceased was the pillion rider. Therefore, the Tribunal should have drawn an inference that Respondent no. 1 was driving the scooter and deceased was the pillion rider at the time of the accident.

18. As regards PW-4 testimony, it is noted that in the later part of his testimony, PW-4 deposed as under:

> "Q: I put it to you that on day of accident Sunil Kumar (deceased) was driving the scooter and Lalit Kumar (Respondent no. 1) was the pillion rider?
>
> A: I did not see myself."

19. PW-4 contradicted himself when he deposed that he did not see who was driving the scooter on day of the accident while earlier he had deposed that on day of accident he had seen respondent no. 1 driving the scooter and deceased was the pillion rider.

20. As he has made contradictory statements, statement of PW-4 that on day of accident he saw respondent no.1 driving the scooter and deceased was the pillion rider cannot be believed.

21. But, testimony of PW-1 that on evening of accident, she saw deceased leaving with respondent no. 1 on his two-wheeler scooter is relevant.

22. In his defense, respondent no. 2 stated that on 23.1.86, he had sold the offending two-wheeler scooter to respondent no. 1.

23. The testimony of PW-1 that on evening of accident, she saw deceased leaving with respondent no. 1 on his two-wheeler scooter and stand of respondent no. 2 that he sold the two-wheeler scooter to respondent no.1 leads to an inference that at the time of accident, respondent no. 1 was driving the scooter and deceased was the pillion rider.

24. I, accordingly hold that the evidence on record, if not establishes, at least probabilizes that at the time of accident, Respondent no. 1 was driving the scooter and deceased was the pillion rider.

25. This is not a criminal trial. Standard of proof to be applied is of preponderance of probabilities.

26. But to succeed in the appeal, claimants are further required to prove that accident was caused due to rash or negligent driving by respondent no. 1.

27. As regards the allegation pertaining to rash or negligent driving by respondent no. 1, in the rejoinder filed by the claimants before the Tribunal, it was stated:

> "The petitioners have verified the entire instance from the labourers who were having the temporary residence at the work site and who had actually seen the accident."

28. But, in testimony of PW-1, no reference has been made to the fact that factum of the accident was verified from the labourers. In fact, she stated in her testimony:

> "I do not know as to what was the destination where my husband and Lalit Kumar were going and for which place. Some police officials came to me on day of accident and informed me about the same at about 11.30 night. I did not come to know if any other vehicle was involved in above accident or not. Similarly I never came to know what was the speed of scooter on which my husband was there at time of accident. It is correct that I do not know about the manner in which accident had taken place."

29. A perusal of the records of the tribunal shows that no witness was produced by the claimants before the Tribunal to depose as to how the accident took place. There is not even an iota of evidence on record to show that accident was caused due to rash or negligent driving by Respondent no. 1.

30. In the light of the evidence on record, I agree with the decision of the tribunal that claimants had failed to establish that accident was caused due to rash or negligent

driving by Respondent no. 1.

31. As claimants failed to establish the fault of respondent No.1 in causing the accident in question, no case is made for enhancing compensation on basis of fault liability as prayed for in the appeal.

32. Another ground advanced by the claimants is that Tribunal was wrong in rejecting prayer of claimants that petition be converted to one under Section 163-A, Motor Vehicles Act 1988.

33. It is noted that claim petition was originally filed under Section 92-A and Section 110-A, Motor Vehicles Act 1939. Later, in the summary of pleadings, evidence and submissions submitted before the Tribunal, it was prayed that petition be converted to one under Section 163-A, Motor Vehicles Act, 1988 and compensation be awarded as per Section 163-A, Motor Vehicles Act, 1988.

34. Section 92-A, Motor Vehicles Act, 1939 relates to compensation in case of no fault liability while Section 163-A, Motor vehicles Act, 1988 relates to compensation in case of hit and run motor accidents.

35. Tribunal rejected the prayer of the claimants and

awarded the compensation to the claimants as per Section 92-A, Motor Vehicles Act, 1939.

36. The prayer of the claimants for conversion of claim petition was to be refused for the simple reason that the provisions of the Motor Vehicles Act, 1988 had no applicability to the case of the claimants.

37. In the decision reported as Maitri Koley & Anr. v New India Assurance Co. & Anr.,(2003) 8 SCC 718, the question before the Supreme Court was whether the claim petition was governed by Motor Vehicles Act, 1939 or Motor Vehicles Act, 1988.

38. In the aforesaid case, accident in question took place on 1.4.1986. Appellants had challenged quantum of compensation awarded by the Tribunal. On behalf of the appellants, it was contended that the Tribunal had applied a wrong multiplier. It was submitted that on the date the Tribunal gave the award the Motor Vehicles Act, 1988 had already come into force. It was submitted that schedule for payment of compensation should have been applied.

39. Supreme Court rejected the aforesaid contention raised by the appellants and observed in para 4 of the

judgment as under:

> " It has been held by this Court in the case of *Padma Srinivasan v Premier Insurance Co. Ltd.,* AIR 1982 SC 836 that the law prevailing on the date of the accident has to apply. On the date of the accident the 1988 Act had not come into force. Under the old Act there was no schedule. Thus the multipliers then being applied were on the basis of ratio laid down by this court in various cases. It could not be said that the multiplier of 14, which was applied, was unreasonable."

40. Again, in the decision reported as *United India Insurance Co. Ltd., Shimla v Tilak Singh & Ors.*, AIR 2006 C 1576, Supreme Court reiterated that it is the accident which furnishes the cause of action for application before the Tribunal.

41. In the appeal before me, accident in question took place on 24.1.87 i.e. before Motor Vehicles Act, 1988 came into force. There is no provision in the Motor Vehicles Act, 1939 corresponding to Section 163-A, Motor Vehicles Act, 1988.

42. I find no infirmity in the Tribunal's decision in rejecting the prayer of the claimants that claim petition be converted from Section 92-A, Motor Vehicles Act, 1939 to Section 163-A, Motor Vehicles Act, 1988.

43. The appeal is accordingly dismissed.

44. No Costs.

January 29, 2007 **PRADEEP NANDRAJOG, J.**
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