

* **HIGH COURT OF DELHI : NEW DELHI**

MAC App. No.494/2007

% Judgment reserved on: 17th July, 2008
Judgment delivered on: 30th July, 2008

Dharam Pal Singh
S/o Sohanpal Singh
R/o B-72, New Usmanpur,
Delhi.Appellant

Through: Mr.Anzar Hussain, Adv.

Versus

- 1.Sonwati, w/o late Sh.Mangat Ram
- 2.Anita D/o Late Sh.Mangat Ram
- 3.Jagjeevan Ram, S/o Late Sh.Mangat Ram
4. Suman, D/o Late Sh.Mangat Ram
- 5.Jaivinder, S/o Late Sh.Mangat Ram.
- 6.Ram Kumar, S/o Late Sh.Mangat Ram
- 7.Om Pal, S/o Late Sh.Mangat Ram.
- 8.Virender Kumar, S/o Late Sh.Mangat Ram
- 9.Lata, D/o Late Sh.Mangat Ram
- 10.Lalita, D/o Late Sh.Mangat Ram

All r/o 29, Ambedkar Street No.5,
Maujpur, Delhi-110053.

11. Vinod Kumar, S/o Pati Ram
R/o J-281/39, 3 & Half Pusta Kartar
Nagar, Delhi. ...Respondents.

Through: Mr.Ramesh Sharma for
R-1 to 4.
Mr.N.S.Dalal for R-11.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal under section 173 of the Motor Vehicle Act, 1988 (for short as the “Act”) has been filed by the Appellant against the award dated 01.08.06 and the Review Order dated 09.05.07 passed by Sh. Sanjay Garg, Judge, Motor Accident Claims Tribunal (for short as the “Tribunal”), Delhi.

2. Brief facts of this case are that Sh. Mangat Ram, deceased died in a road side accident which took place on 23rd January, 2003, due to rash and negligent driving of scooter no. DL-5SL-8964, on the pillion seat of which deceased was travelling and the motorcycle no. DL-9SE-3906.

3. The Claimants/Respondents no.1 to 10 herein claimed compensation of Rs.32,55,000/- from the

Appellant and Respondent no. 11 herein, being driver and owner of the offending vehicle.

4. The Appellant had put his appearance before the Tribunal but despite availing number of opportunities, failed to file written statement. His right to file written statement was forfeited by the Tribunal vide order dated 06.11.03.

5. The New India Assurance Co. was deleted from the array of Respondents vide order dated 25.07.03.

6. Respondent no.11 herein, filed written statement stating that he was driving the scooter on which deceased was sitting on the pillion. It is stated that the offending vehicle is the motorcycle not his scooter since accident took place due to negligence of the motor cycle no. DL-9SE-3906 being driven by Appellant.

7. Vide impugned judgment, the Tribunal awarded compensation of Rs.6,97,285/- in favour of the claimants and against the Appellant herein along with

the interest @ 7% from the date of filing of the petition i.e. 03.04.03 till the date of realization.

8. The Appellant filed an objection/review against the said award by taking plea that he was unaware about the proceedings and could not avail Legal Aid and cross-examine the witnesses. He has also taken the plea that the accident was not caused due to his negligence.

9. Vide order dated 09.05.07, the Tribunal dismissed the application by holding that there was no merit in this objection application.

10. It has been contended by the Ld. Counsel for the Appellant that, Respondent no.11 lodged the FIR against the Appellant with malafide intention to save himself and implicated the Appellant in the said accident and as such the testimony of Respondent no.11 (being R3W1) is not believable which is against the principle of natural justice that a person cannot be made witness of the wrong done by him. The criminal

case arising out of FIR no. 26/2003 is pending against the Appellant and as such till the disposal of this case, the Appellant cannot be hold guilty of driving the motor cycle in rash and negligent manner.

11. The Trial Court has failed to appreciate the deposition of the witnesses, PW-2 Sh. Ganpat and PW-3 Sh. Subhash Kumar, who deposed before the Trial Court that the accident took place due to the rash and negligent driving of the Respondent no.11. The Trial Court discarded the testimony of these witnesses and passed the impugned award against the Appellant. The Trial Court has failed to appreciate the fact in disposing of the review application/ objection vide Order dated 9.5.07, that the prosecution witnesses PW-1 to PW-3 have not been cross-examined by the Appellant and as such the Trial Court should have given the opportunity to defend the case in the review application. For the above reasons, the award passed by the Tribunal is illegal and the same is liable to be set aside.

12. The Learned Counsel for the Respondents no. 1 to 4 has contended that the Appellant has failed to show any illegality in the order of the Tribunal. It is further stated that the Appellant cannot take benefit of his own wrong.

13. The Learned Counsel for the Respondent no.11 has contended that the accident took place solely due to the negligence of the Appellant.

14. As regards the contention of pendency of FIR, in ***P. Swaroopa Rani Vs. M. Hari Narayana @ Hari Babu 2008 (3) SCALE 501***, the Apex Court has observed as under;

“It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”

15. In ***M. Krishnan v. Vijay Singh & Anr., JT 2001 (8) SC 540***, the Apex Court has observed as under;

“Civil proceedings, as distinguished from the criminal action, have to be

adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

16. Thus, in view of the above decisions, this contention of the Appellant is rejected.

17. PW2 Sh. Ganpat, deposed that on 03.01.03 at about 4 p.m. he was going from Mori Gate to Shahdara. He was sitting on the pillion seat on two wheeler scooter. Another two wheeler scooter overtook them. At the inter-section, the motorcycle tried to take 'U' turn while coming from Shahdara side. The two wheeler scooter which overtook, collided with the motorcycle. The injured was taken to Hospital by auto rickshaw.

18. During cross-examination, PW2 stated that he cannot tell the name of the driver and number of the scooter from whom he took lift as he is illiterate. He further stated that accident took place due to

negligence of the scooter being driven by Respondent No.11 and motor cycle being driven by Appellant herein.

19. PW3, Sh. Subhash Kumar Gupta, filed affidavit of his testimony, wherein he stated that on 23.01.03 at about 4 p.m., he was going to Shahadra by bus. One scooter no. DL-5SL-8964 was moving ahead of his bus. The scooter was being driven at a very high speed and in a rash and negligent manner. A pillion rider was sitting on the scooter who was wearing white clothes and carrying black coat. PW3 has further stated that scooter no. DL-5SL-8964 hit against the motorcycle at the intersection near Bela Farm. The motorcycle was also driven in a rash and negligent manner and it was taking 'U' turn at the intersection of the road. After collision of both the two wheelers, the pillion rider hit his head against the road. He stated that he went to the spot to help the scooterist in taking the injured pillion rider to the Hospital in three wheeler. PW3 has also stated that recently he visited his sister's house

and there he recollected that Sh. Mangat Ram Advocate who was living in the vicinity, had received fatal injuries in the road accident, which he had witnessed.

20. During cross-examination by Respondent No.11, he stated that he is neither the summoned witness nor a witness in criminal case.

21. Respondent No.11 has examined himself as R3W1. In his affidavit he stated that Sh. Mangat Ram, the deceased was his advocate in a civil suit pending in the Court of Sh. Deepak Garg, Civil Judge, Delhi. The case was fixed on 23.01.03 and after attending the case he was going to his residence, the deceased requested him for lift. He and the deceased, as pillion rider, were going on scooter. When they reached near Bela Farm at 4 p.m., a motorcycle driven by Appellant came from Shahadra side and took 'U' turn in front of Bela Farm in a rash and negligent manner and at a

very high speed. The motorcycle hit his scooter, as a result of which he and the deceased sustained injuries.

22. Respondent No.11 also examined R3W2 Sh. Radhey shyam, who deposed that he investigated the FIR no. 26/03 and no witness deposed against Vinod Kumar. He further stated that during investigation, the entire evidence came against Dharam Pal.

23. In view of the aforesaid evidence, the Tribunal held;

“When PW2 and PW3 left the spot after the accident, the question arises how petitioners came to know about them subsequently. PW2 has nowhere stated if deceased Mangat Ram was known to him or he identified the deceased on the spot. Whereas PW3 Sh. Subhash Kumar Gupta has given the explanation that recently he visited his sisters’ house and there he came to know that Sh. Mangat Ram advocate who lives in the vicinity died in the accident witnessed by him. The accident is dated 03.01.03 whereas PW3 was examined as a witness on 09.07.04. It sounds unbelievable that after lapse of one and half years PW3 recollected this accident and came to know the person who sustained injuries in this accident was Sh. Mangat Ram advocate. Moreover,

PW3 has nowhere given the address of his sister. The witness has also not bothered to explain whether his sister used to live in the same area where deceased was residing."

The Tribunal further held;

"As per PW2 and PW3 the motorcycle took 'U' turn while the scooter driven by R3, which deceased was sitting on the pillion seat was going straight and accident took place at the intersection on the road opposite Bela Farm. As per the traffic rules a person taken 'U' turn is supposed to be careful regarding the movement of the traffic on the road to which he is approaching after taking 'U' turn. Because the vehicle going straight has a first right to cross intersection to the vehicle who is coming on that way after taking 'U' turn from the other road. Both PW2 and PW3 has stated that even the scooter on which the deceased was sitting on the pillion seat was being driven in a rash and negligent manner. From the manner of accident discussed above, I do not agree with PW2 and PW3 that the impugned accident took place due to composite negligence of scooter driven by R3 and motorcycle driven by R1."

24. As per the findings of learned Tribunal, the claimants in support of their claim have relied upon certified copy of the chargesheet of FIR No.26/03 P.S. Seelampur which is against the Appellant on the

complaint made by Respondent No.11 regarding the impugned accident showing involvement of the offending vehicle. Claimants have also relied upon certified copy of the P/M report Ex.P-3 of Mangat Ram S/o. Sh. Birbal Singh aged 50 years, wherein cause of death is opined as shock due to antemorem brain damage produced by blunt force impact.

25. Thus, the Tribunal held that in view of the aforesaid reasons he does not agree with the contentions raised by Learned Counsel for the claimant that the impugned accident solely took place due to composite negligent of Appellant and Respondent No.11. The Tribunal further held that it stands established from the circumstances discussed above that the impugned accident solely took place due to rash and negligent driving of Appellant causing fatal injuries to Sh. Mangat Ram Advocate.

26. The findings given by the Learned Tribunal are based on sound and cogent reasonings and as per evidences proved on record. Under these circumstances, no infirmity can be found with the impugned judgment of the Tribunal and thus, there is no merit in this appeal and the same is dismissed.

27. No order as to costs.

28. Trial Court record be sent back forthwith.

V.B.GUPTA
(JUDGE)

30th July, 2008
Bisht