

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP 189/2007

Judgment delivered on: February 27, 2008

Sh. Rajendra Jha Appellant.
Through: Mr. P.S. Yadav, Adv.

versus

Ms. Arti Rohatgi And Anr. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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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 |

KAILASH GAMBHIR, J. Oral:

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By way of the present appeal, the appellant seeks to challenge the impugned award whereby the claim petition filed by the appellant was dismissed.

Brief facts of the case inter-alia are that the appellant is a practicing Advocate, aged about 41 years. On 31.5.2004 at about 5:20 p.m. while he was returning to his house from Tis Hazari Courts and was standing at bus stop of ISBT, near Ritz Cinema Hall, the respondent No. 1 came from Mori Gate side by driving her car No. DL-6CB 5679 in rash and negligent manner and the said car ran over the right foot of the appellant causing him grievous injuries in his foot and various other injuries. The respondent No.1 did not care to stop her car despite injuries caused to him and the appellant after noting down the number of the car informed the same to the Police Control Room. The police apprehended the respondent No.1 and an FIR was registered with P.S. Kashmiri Gate. The appellant in the meanwhile got himself medically examined at Aruna Asaf Ali Hospital.

Mr. P.S. Yadav, counsel appearing for the appellant contends that the tribunal has dismissed the petition of the appellant, although sufficient evidence was placed by the appellant so as to prove factum of negligence and the

injuries sustained by the appellant. Contention of the counsel for the appellant is that an FIR No.258/2004 dated 31.05.2004 was registered against the respondent under Section 279/337 IPC and respondent alone had sought release of the offending car on Superdari, and therefore, there was no occasion for the tribunal to hold that the negligence was not proved by the appellant. Counsel for the appellant also contends that the respondent no.1 did not lodge any counter complaint against the appellant, if as per the respondent, false FIR was registered by the appellant against her. The tribunal also overlooked grievous injuries sustained by the appellant in the toe of his right leg and also the medical record duly proved in evidence. Counsel for the appellant further contends that the tribunal also overlooked the fact that during the trial, the appellant had duly identified respondent no.1 to be the same person who was driving the offending vehicle in a rash and negligent manner.

Per contra, counsel appearing for the respondent vehemently refutes the submissions made by the counsel for the appellant. Counsel for the respondent submits that the appellant although, being an advocate by profession, has miserably failed to prove any kind of negligence on the part of respondent no.1. Contention of counsel for the respondent is that without proving rash and negligent driving on the part of the driver of the vehicle, tribunal has rightly dismissed the claim petition of the appellant.

Counsel for respondent also invited my attention to the deposition of PW2 who did not utter even a single word imputing negligence on the part of respondent no.1 in the accident. The said witness Shri Ramesh Kumar Jha was not a summoned witness. Even the appellant in his deposition falsely disclosed the colour of the car as white while the same was deep purple.

I have heard counsel for the parties and have perused the records.

It is a settled legal position that proof of negligence is essential to maintain a claim for compensation as envisaged under Section 166 of the Motor Vehicles Act. It is only under Section 163-A, the use of the offending vehicle but not negligence on the part of the offending vehicle is required to be established. Unlike Section 163-A, proof of negligence is sine qua non to claim compensation under Section 166 of the Motor Vehicles Act. In this regard, the Hon'ble Apex Court has, in **Oriental Insurance Co. Ltd vs. Meena Variyal**, (2007) 5 SCC 428 observed as under:

“We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 10 was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or

permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

The appellant in the present case is an Advocate by profession and as per his own case set up in the claim petition, he was accompanied by his client Mr. Ramesh Kumar Jha who in his deposition as PW2, did not utter a single word attributing any negligence on the part of respondent no.1 in driving her vehicle. Shri Ramesh Kumar Jha was the only independent witness, and therefore, his evidence is very material to test veracity of the case set up by the appellant in the claim petition. It is no doubt true that the FIR was lodged by the appellant and

even Superdari of the offending vehicle was taken by respondent no.1 but the same in itself would not be enough to prove negligence on the part of respondent no.1, more particularly, when the independent eye witness had not attributed any kind of negligence on the part of respondent no.1. Suffering of injuries due to the accident is a consequential act of accident and the same in itself cannot be a pointer to hold the respondent no. 1 as rash and negligent driver of her vehicle. The appellant has also failed to disclose correct colour of the car which was being driven by respondent no.1.

In the light of the aforesaid discussion, it is apparent that the appellant failed to prove rash and negligent driving on the part of respondent no.1. The appellant being an advocate should have been more careful in producing some cogent and convincing evidence to prove rash and negligent driving on the part of respondent no.1 and since the appellant could not do so, therefore, no illegality or infirmity can be found with the findings of the tribunal in the impugned award. I, therefore, do not find

any substance in the present appeal filed by the appellant
and same is hereby dismissed.

February 27, 2008
raj

KAILASH GAMBHIR, J.