

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

MAC App. No.341 of 2008

% Judgment reserved on: 14th August, 2008

Judgment delivered on: 25th August, 2008

1.Prem Shankar & Anr.
S/o Sri Lalta Prasad Gupta,
R/o C-165, Nanakpur,
New Delhi.

2.Prem Chand
S/o Shri Lalta Prasad Gupta
R/o 6/16, East Patel Nagar,
New Delhi.

....Appellants

Through: Mr.Pramit Saxena, Adv.

Versus

Shri Ram Narain Aggarwal
S/o Shri Om Prakash Aggarwal
R/o 64, Income Tax Colony,
Uttri Pitampura,
New Delhi.

...Respondent.

Through: Nemo.

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 Vehicles Act, 1988 (for short as the “Act”) has been filed by Appellants against the award dated 07.02.08 passed by Sh. Suresh Chand Rajan, Judge, Motor Accident Claims Tribunal (for short as the “Tribunal”).

2. Brief facts of the case are that Ram Narain Aggarwal/Respondent, aged 45 years suffered bodily injuries in a road accident on 09.04.96. The accident occurred when he was going to Nirman Bhawan for some official work on his two wheeler scooter, bearing no. DBI-6690. While coming back from Nirman Bhawan to his office, when he reached at the crossing of Rajpath and Janpath near the National Museum while coming from the side of the National Museum on his left side of the road, he found the traffic signal light as green. On this, he crossed the green light signal and

turned towards his right leading to India Gate and had almost crossed the road, when all of a sudden a car bearing no. DIE-505, being driven by Appellant no.1 came there at a high speed and in a rash and negligent manner, hit his two wheeler scooter from left side. Due to impact, he fell on the road and sustained grievous injuries. Respondent was removed to RML Hospital where he was operated upon and discharged from there on 20.04.96.

3. Consequently, the Respondent filed a claim petition under section 166 & 140 of the Act claiming compensation of Rs.7,00,000/- along with the interest @ 18% per annum.

4. Appellant nos.1 & 2 filed their written statement separately, in which both denied the factum of accident and involvement of vehicle in accident.

5. *Vide* impugned judgment, the Tribunal awarded the compensation of Rs.1,02,380/- along with the interest @ 7% per annum from the date of filing of the

petition till its realization, payable by the Appellant nos. 1 & 2 to the Respondent.

6. It has been contended by Ld. Counsel for the Appellant that under section 166 of the Act, the claim for award of compensation is inadmissible if no negligence is proved. A perusal of the statement of Respondent during Examination-in-chief that *"it was green signal for him as well as for Toyota Car"* makes it clear that the Appellant was driving his car only on the green signal and thus no negligence can be attributed to the Appellants.

7. The Respondent failed to discharge his initial onus of proving of negligence against the Appellants. Consequently, the claim of the Respondent against the Appellants, under section 166 of the Act is not maintainable.

8. It is also contended by Ld. Counsel for Appellants that the Respondent in his cross-examination clearly

admitted that “He is not having permanent disability from this accident....”

9. The other contention is that in the present case, the Court of Metropolitan Magistrate, *vide* its order dated 25.06.05, in case FIR No.110 of 1996, P.S. Parliament Street, under section 279/338 of the Indian Penal Code, observed that in the given situation, with certainty it cannot be said that in fact which of the driver of the vehicle was at fault, particularly when nothing has been stated by eye-witness/injured witness regarding the manner of driving or rashness or negligence on part of the Appellant and acquitted the Appellant on the finding that rashness or negligence could not be proved on part of the Appellant. It was also observed that “.....at that time, as per the system of light signals at crossings on green signal, the traffic could have proceeded straight from both the sides and towards left and right turns. In this system of green light, the person who is taking the right turn has to take care of traffic coming from opposite side whereas,

the person coming from straight has to take care about the traffic coming after taking right turn....”.

10. The Metropolitan Magistrate, while trying and acquitting the Appellant, observed that both the persons had ample opportunity to see the vehicle coming from opposite direction, as such, the Appellant cannot be held solely liable for the accident.

11. Thus, the Tribunal ought to have appreciated that from the facts of the case it is clear that in any case, the Respondent is guilty of contributory negligence by itself.

12. The Respondent himself has placed on record certified copy of charge sheet filed against Appellant no.1 under section 279/338 of the Indian Penal code, certified copy of FIR, site plan, mechanical inspection report, seizure memo of the offending vehicle and superdarinama.

13. The first point which arises for consideration is as to whether the accident took place due to rash and

negligent driving on the part of the Respondent or due to rash and negligent driving on the part of the car driver or it is a case of contributory negligence.

14. Negligence is nothing but a failure to observe precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Not only commission of an act but also an omission to do something which a reasonable man would do or is obligated to do amounts to negligence. Therefore, negligence does not always mean absolute carelessness, but also includes a failure to observe the degree of care and precaution and vigilance duly required under the circumstances which justly warrant. Negligence is a relative and comparative term. No rigid formula and no mathematical ratio could be laid down as to what constitutes negligence under particular circumstances of the accident, but to determine what an act would amount or would not amount to negligence, the test would be whether a prudent and reasonable man would cause damage. In

other words, not only an act but also an omission to do an act which the circumstances warrant from a reasonable man's point of view and which the law obliged would constitute negligence.

15. The relevant findings of the Tribunal on the point of negligence are as under:-

"The petitioner deposed on oath that 09.04.1996 at about 12 noon he was on his way back to his office in C.R. Building from Nirman Bhawan on his two wheeler scooter bearing no. DBI-6690 and reached at Rajpath and Janpath crossing and crossed the intersection when the signal was green and he was on the left side of the road, when a car bearing no. DIE-505 Toyota came from the side of Connaught place on Janpath and struck against the rear left side of his two wheeler scooter. Due to impact petitioner fell on the road along with scooter. Petitioner suffered injuries on his left eye, forehead, and also suffered fracture both bones left leg and became unconscious. In the cross-examination petitioner denied the suggestion that there was no negligence on the part of R-1.

I have perused the entire cross-examination. Nothing material has come in the cross-examination so as to discredit the case of the petitioner. It is settled proposition that mere suggestions have no evidentiary value.

The respondents have not been able to bring anything on the record so as to prove that there was any negligence on the part of the petitioner. R-1 did not come forward so as to disprove that there was no negligence on his part. Though the petitioner discharged his initial onus but the respondents did not discharge the onus placed upon them. In these circumstances I hold that petitioner sustained injuries in the accident caused by R-1 while driving offending vehicle bearing no. DIE-505 in a rash and negligent manner.”

16. In the present case, during the course of trial, both the Respondents (Appellants herein) filed their written statement. Later on, they absented and *vide* order dated 03.09.03, they were proceeded ex-parte.

17. Thereafter, they moved an application under Order IX Rule 7 of the Code of Civil Procedure, 1908 for setting aside ex-parte order. *Vide* order dated 06.01.04 ex-parte order was set aside.

18. Subsequently, Appellants herein were given various opportunities to lead their evidences but inspite of various opportunities granted to them they did not produce any evidence as such, the Trial Court

vide order dated 1.10.04 closed the evidence of Prem Shankar (Appellant no.1 herein) whereas, on that day Appellant no.2 herein, absented and was proceeded ex-parte and his evidence was also closed.

19. However, written submissions have been filed on behalf of Appellant no.1 herein, in the Trial Court.

20. The Respondent deposed the manner of the accident before the Tribunal. In the cross examination, nothing material has come so as to discredit the case of the Respondent. Further, Appellant no.1 did come forward so as to disprove that there was no negligence on his part. Thus, there is no reason to disbelieve the Respondent.

21. In a compensation case, the claimants have to prove their case that accident took place with a particular vehicle. Since the Respondent has proved his case and therefore, Appellants are liable to pay compensation.

22. In that view of the matter, no interference is called for with respect to the finding of negligence recorded by the Tribunal against the Appellant holding him responsible for the accident in question. Thus, the contention of the Appellants regarding the contributory negligence or that the offending vehicle is not involved in the accident is rejected.

23. Regarding the contention of acquittal in criminal case by the Metropolitan Magistrate, 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.”

24. 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."

25. A constitution bench of the Apex Court, dealing with the same question, in ***Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., 2005 (2) RCR (Criminal) 178*** has observed as under;

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in ***M.S. Sheriff v. State of***

Madras, AIR 1954 SC 397 give a complete answer to the problem posed:

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust."

26. Thus, in view of the above decisions, this contention of the Appellants is also rejected.

27. Now coming to the statement made by the Respondent herein, in cross-examination dated 19.08.02 that he is not having permanent disability from this accident, the Tribunal *vide* order dated 15.09.07 allowed the certificate by holding that the photocopy of disability certificate is available on record and the same was filed in the year 2006.

28. On 27.09.07 ,the Respondent examined Sh. Surender Singh, Record Clerk, RML Hospital as PW2 who has proved the permanent disability certificate of the Respondent as Ex.PW2/A.

29. Respondent in his examination-in-chief before the Tribunal deposed that he remained admitted in RML Hospital for about 12 days and was kept in the Hospital in simple plaster and his left eye was stitched during this period. Since his left leg did not fully joined, on 13/14th May, 1996 he was again admitted in

the Govt. Hospital, Pusa Road, where his leg was operated upon and one external fixator was fixed and after three days he was discharged from the Hospital. He further stated that at the time of accident, he was a Govt. servant and was earning Rs.6,600/- per month and remained on leave from his office without pay for 10/11 months and suffered monetary loss of Rs.55,000/- to Rs. 60,000/-. He also stated that though he remained hospitalized from 09.04.1996 till 20.04.1996, but he remained bed ridden till date.

30. With regard to disability, the Tribunal *vide* impugned judgment held as under;

“The perusal of the record indicates that the petitioner had suffered 10% disability on account of the injuries suffered in the accident. The disability certificate Ex.PW2/A indicates that petitioner suffered fracture in both bones of both legs without shortening with mild restriction of ankle motion. It is an admitted case that petitioner remained hospitalized in RML Hospital from 09.04.1996 to 20.04.1996. Even thereafter, the petitioner remained under treatment for a long period.”

31. So, from the perusal of record, it is clear that the Respondent had filed his disability certificate and the same was allowed by the Tribunal on 15.09.07, moreover Appellants have not adduce any evidence contrary to it.

32. 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.

33. No order as to costs.

34. Trial Court record be sent back forthwith.

August 25, 2008
Bisht

V.B.GUPTA, J.