

KRISHAN KUMAR Appellant
Through : Ms. Richa Kapoor, Adv.

versus

CHANDER PAL & ORS. Respondents
Through : Mr. M.L. Sharma and
Mr. P.K. Sharma, Advs.
for R – 1 and 2.
Mr. K.L. Nandwani, Adv.
for R – 3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby the claim petition was dismissed.
2. The accident dated 31st January, 1995 resulted in the injuries to the appellant. On 31st January, 1995 at about 1:40 pm, the appellant was driving his two wheeler scooter and when he reached Prem Piao and Nangal turn near Delhi Police Lane on Kanjhawala Road, Delhi, he met with an accident with truck bearing No.H-26-6155 coming from the

opposite side. The appellant filed the claim petition against the driver, owner and insurance company of the truck.

3. The driver and owner of the offending truck filed a joint written statement dated 21st September, 1995 in which it was stated that the appellant over took the parked truck all of a sudden and tried to cross the road in haste and received injuries.

4. Paras 1 and 23 of the written statement of respondent Nos.1 and 2 are reproduced herein:-

“1. That the present petition is without any cause of action as the alleged accident is not the result of negligence and rashness of the respondent no.1. The petitioner is taking advantages of his own wrongs. The respondent no.1 was driving the Truck No.,H-26-6155 at normal speed in the right direction and at correct side. The petitioner came after crossing a truck all of sudden. The truck was parked at the edge of the road. Without seeing and without caring the injured tried to cross the road in haste and received injured on his person of simple nature. The petition is liable to be dismissed against the replying respondents.”

“23. Para 23 of the petition is wrong and denied. It is submitted that the respondent no.1 was driving the vehicle at a very modest and slow speed in the right side when the petitioner jumped on the road after crossing a parked vehicle. He was driving the two wheeler scoter in a most negligent manner and at a very fast speed. He came into contact with the truck and fell down on the ground and sustained only some abrasions. He was discharged after first aid and he had not spent any amount on his treatment”.

5. The driver of the truck appeared in the witness box as RW-1 and took a contradictory stand. RW- 1 deposed that a DTC bus was coming from the opposite direction and the

appellant over took the DTC bus and on seeing the truck, he applied sudden brakes which resulted in skidding of the scooter due to which he fell down and sustained injuries. It was further stated that no injuries were caused by the truck. Paras 5 to 10 of the evidence of respondent No.1 are reproduced herein:-

“5. That when the deponent reached between Bawana and Kanjhawala and was coming with low speed on his correct side i.e. left of the road which has no divider in between the road was in only wide and can permit crossing of one up and one down vehicle at a time.

6. That a TDC Bus coming from opposite direction i.e. doing to Bawana was about to cross the truck of the deponent.

7. That the petitioner who was following the DTC Bus, was at high speed and without caring from the opposite traffic attempted to overtake the DTC Bus.

8. That the petitioner suddenly at High speed started over taking DTC Bus and was seeing the truck of the deponent, he applied sudden break which resulted in skidding of the scooter and petitioner fell down on road hence sustained injuries due to his own negligence.

9. That this incident witnesses by Sh. Radhubir Singh who was travelling in Cabin along with the deponent.

10. That no injury was sustained from the truck of the deponent.”

6. The eye witness, Raghubir Singh appeared as R1/RW-2 and repeated the same statement as given by the driver of the offending truck.

7. The owner of the truck appeared as RW-2 and

altogether denied the accident between the scooter and the truck.

8. The officer of the Insurance Company appeared in the witness box as R3W1 and deposed that the policy was cancelled before the accident due to dishonour of the cheque towards the premium.

9. The site plan of the accident was prepared by the police which shows that the accident occurred at point 'A' and the truck dragged the scooter for a considerable distance up to point 'B'.

10. The photographs of the accident were also exhibited before the learned Tribunal which show that the scooter was entangled between the wheels and the scooter appears to have been dragged by the truck.

11. The learned Tribunal held that the truck was on the correct side of the road and the scooter had come on the wrong side and, therefore, there was no negligence of the truck driver. The learned Tribunal placed credence on the statement of the driver of the offending vehicle. The driver of the offending truck is unworthy of credit in as much as he made absolute contradictory statement in the written statement and the evidence which aspect has not been considered by the learned Tribunal. Although the truck was on the correct side of the road and the scooter came on the wrong side which resulted in the accident but the driver of the truck cannot be absolved altogether because he hit the

scooter and dragged it for a considerable distance. A person driving the vehicle on the road on the correct side has no right to hit any person who comes on the wrong side. Due care and caution has to be exercised by all drivers of the motor vehicles on the road and even if a person comes on the wrong side, the driver of the motor vehicle has a duty to take all measures to avoid the accident. The finding of the learned Tribunal with respect to the negligence is, therefore, set aside. It is held that the accident occurred due to the contributory negligence of the appellant as well as the driver of the truck and they are equally responsible for the accident.

12. With respect to the insurance of the offending truck, it has come in evidence that the offending truck was insured with respondent No.3 but since the cheque was dishonoured, respondent No.3 cancelled the policy before the date of the accident. However, there is no evidence on record that the intimation of cancellation of the policy was sent to the Transport Authority.

13. It is well settled that the Insurance Company remains liable towards the third party till the time intimation is sent to the Transport Authority.

14. The learned Tribunal has not given any finding on the computation of compensation as well as on the aspect of liability of Insurance Company and, therefore, this case needs to be remanded back to the learned Tribunal for

computation of compensation and for ascertaining the liability of the Insurance Company.

15. The appeal is allowed and the impugned award is set aside. The matter is remanded back to the learned Tribunal for adjudication.

16. The learned Tribunal may given opportunity to the parties to lead further evidence, if deemed necessary, before deciding the matter.

17. The parties are directed to appear before the learned Tribunal on 16th September, 2009.

18. Considering that this case relates to the accident dated 31st January, 1995, the learned Tribunal is directed to expedite the matter and decide the same preferably within a period of six months.

19. Copy of this order be given 'Dasti' to learned counsel for both the parties under signatures of Court Master.

20. The LCR be returned back forthwith.

J.R. MIDHA, J

AUGUST 13, 2009
mk