

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC APP. No. 382/2007

GANGA SAGAR SHARMA & ANR. Appellants
Through: Mr. Randhir Jain, Ms. Ruchika Jain and
Mr. Gulshan Sharma, Advocates.
Versus

SAVITRI BANSAL AND ORS. Respondents
Through: Mr. Dinesh Chander Yadav and
Mr. A.S. Yadav, Advocates for the
respondents No.1 to 5.

Date of Decision : August 19, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

J U D G M E N T

: REVA KHETRAPAL, J.

1. This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 27.02.2007 passed by the Motor Accident Claims Tribunal, Delhi in Claim Petition No.226/2004.

2. The facts may be briefly recapitulated as follow:

On 20.09.2004, the respondents No.1 to 5 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the appellants claiming compensation in the sum of ₹ 10,00,000/- on account of the demise of the husband of the respondent No.1 and the father of the respondents No.2 to 5 in a road accident on 06.04.2004 near Hanuman Mandir Road, Shiv Ram Park, Delhi with scooter No. DL-2S-J-3250 driven by the appellant No.2 and owned by the appellant No.1. In the written statement filed by them, the appellants denied the factum of accident and involvement of the offending vehicle. All other facts alleged by the respondents No.1 to 5 were also refuted. It was submitted by the appellants that the appellant No.2 had taken the injured to the hospital in order to save his life, but he had been falsely implicated in the case by the police of Police Station Nangloi, which was inimical to him as he had instituted a suit for damages against them.

3. In the course of evidence before the learned Tribunal, the claimants/respondents No.1 to 5 examined four witnesses in all,

namely, PW1-Smt. Savitri Bansal, the wife of the deceased, who was not a witness to the accident, PW2-Shri Radhey Shyam, who deposed about the salary of the deceased, PW3-Shri Vinay Kumar, who claimed to be an eyewitness to the accident and PW4-Constable Sanjiv Kumar, who proved the First Information Report No.287/2004. To counter the evidence of the aforesaid witnesses, the appellants examined five witnesses in all, namely, RW1-Shri Bhupender, who deposed about the pendency of a Civil Suit for damages filed by the appellant No.2 against the police, RW2- Shri Randhir Singh from the Transport Authority, who deposed from the records about the make of the cars bearing Nos. DL-2CD-3249 and 3250, RW3-Jagmer Singh, who proved the DD Entry No.19 A as Exhibit RW-3/A, RW4 Shri Pankaj Kumar Verma, the appellant No.2, who was allegedly driving the offending vehicle at the time of the accident and RW5-Shri Ganga Sagar Sharma, the appellant No.1-the owner, who deposed about the impounding of the offending scooter by the police on 12.04.2004.

4. After analyzing the evidence on the record, the learned Claims Tribunal passed an award of ₹ 4,25,000/- (Four lakhs and twenty five thousands only) in favour of the respondents No.1 to 5 and against the appellants with interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of the realisation. The respondents were directed to jointly and severally satisfy the award within a month of the date of the passing of the judgment.

5. Aggrieved by the aforesaid judgment and award, the present appeal has been preferred by the appellants praying for setting aside of the award. Mr. Randhir Jain, the learned counsel for the appellants, at the outset, contended that the claim petition ought to have been dismissed by the learned Tribunal in view of the clear evidence on record that the scooter of the appellants was not involved in the accident. Learned counsel referred to DD Entry No.19-A dated 06.04.2004 (Exhibit RW3/A), which for the sake of convenience is reproduced hereunder:

Copy of DD No. 19-A dated 06.04.2004 of P.S.Nangloi, Delhi.

A.S.I. Satyapal Singh	Information of receipt of W.T. message and dispatch	Time 5.28 P.M. It is recorded that wireless operator came to D.O. Room and got it recorded that information has been received from H.C.Jitender No.1404/PCR that near Hanuman Mandir, Nangloi Road, Scooter No. DL-2CD-3249 has hit a person and ran away. This information has been recorded in daily diary having been received as WT message and copy of the report is sent to S.I. Kulbeer Singh by the hand of Constable Narveer No.1132/W. Sd/- A.S.I.D.O.
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6. On the basis of the aforesaid DD Entry made at Police Station, Nangloi, the learned counsel for the appellants contended that the

number of the offending vehicle was DL-2CD-3249 as given in the said DD Entry and the said vehicle was an ambassador car. The attention of this Court was then invited by Mr. Jain to the site plan prepared by the Investigating Officer during the course of investigation of the case in which the offending vehicle is mentioned as DL-2C-J-3250, which according to the counsel for the appellants is a Maruti car. The learned counsel pointed out that as against this, the number of the offending vehicle in the first information report is mentioned as a scooter bearing No. DL-2S-J-3250.

7. Mr. Randhir Jain, counsel for the appellants, next referred to the testimony of RW2-Shri Randhir Singh, Record Clerk from the Transport Authority, New Delhi Zone, who, on the basis of the summoned record testified that as per the record, vehicle No.DL-2CD-3249 was an Ambassador Car registered in the name of National Engineering Industries, Prakash Deep Building, Tolstoy Marg, Delhi and vehicle No.DL-2CJ-3250 was a Maruti 800 car registered in the name of one Shri Surinder Singh Rathi, resident of 35, Sector – 3, Type-IV, Sadiq Nagar, New Delhi. The statement prepared on the

basis of the computer record of the above said vehicles, was proved by the witness as Exhibit RW2/A. On the basis of the aforesaid documentary evidence, it was contended by the learned counsel for the appellants that if DD Entry No.19-A, which was recorded immediately after the accident is to be believed, the accident was caused by an Ambassador car, but if the number mentioned in the site plan is taken to be correct the accident was caused by a Maruti car, in view of the fact that 'CD' and 'CJ' indisputably denote a car while 'SJ' denotes a scooter.

8. Adverting next to the testimony of RW1, an Ahlmad from the court of learned Additional District Judge, who was summoned with the file of Suit No.269/2003 instituted by the appellant No.2 (Shri Pankaj Kumar Verma) against Head Constable Ramdhari for recovery of damages in the sum of ₹ 4,38,670/-, Mr. Randhir Jain contended that on account of the institution of the said suit the police of the Police Station, Nangloi was inimical to the appellant No.2, and in order to settle scores with him had falsely implicated him in the present case. He further contended that the appellant No.2 at one

point of time had to be taken into protective custody by the Bihar Police, as the police of this particular police station had threatened to eliminate him. He stated that though the aforementioned suit had since been dismissed on the technical ground of non-compliance with Section 140 of the Delhi Police Act, an appeal filed by the appellant No.2 against the said dismissal was still pending.

9. An attempt was also made by the learned counsel for the appellants to create a dent in the testimony of the eyewitness, PW3-Shri Vinay Kumar on the ground that he had not been cited by the police as a witness. It was further contended by the counsel that PW1-the wife of the deceased in the course of her testimony had admitted that she had met the appellant No.2 at the hospital. If this be so, the learned counsel contended, the appellant No.2 could have been arrested then and there on the identification of PW3. He pointed out that the case of the police was that the appellant No.2 had run away from the spot, which was wholly contrary to the statement made by PW1-Smt. Savitri Devi before the learned Tribunal to the effect that she had met him when she went to the hospital on hearing about her

husband having been hit in the accident, and her further statement that while she was present in the hospital, the appellant No.2 had tendered an apology to her for having caused the accident. The learned counsel further contended that though the accident took place on 06.04.2004, it was on 10.04.2004 that notice was given to the appellant No.1 by the police to produce his scooter at the police station and it was on 12.04.2004 that the appellant No.2 was eventually arrested.

10. Rebutting the aforesaid arguments of the learned counsel for the appellants, Mr.Dinesh Chander Yadav, the learned counsel for the respondents, contended that the impugned judgment and award deserved to be maintained. He stated that though initially the police did create some confusion on account of the vehicle number indicated in the FIR, which at one place, recorded the number as DL-2CD-3249 and at another place as DL-2CJ-3250, but in the course of investigation, the confusion was cleared and the correct number was recorded in the FIR as DL-2S-J-3250. He submitted that the evidence on record amply bears out the case of respondents No.1 to 5 that it was the vehicle driven by the appellant No.2 and owned by the

appellant No.1 that had resulted in fatal injuries on the person of the deceased.

11. After hearing the parties at length and scrutinizing the records, I am unable to agree with the contentions raised by the learned counsel for the appellants for the following reasons.

12. The first and foremost is that though the number mentioned in DD Entry No.19-A, which was recorded at 5:28 P.M. immediately after the accident is DL-2CD-3249, the said DD Entry clearly mentions that it was a scooter which had caused the accident. Indisputably, this information had been recorded in the Daily Diary after having been transmitted by wireless message and it is well known that the wireless messages are at times not clearly relayed and at times not properly audible. Secondly, the rukka which was dispatched for recording of the First Information Report in this case clearly mentions that the accident was caused by a scooter bearing No.DL-2S-J-3250. The said rukka was recorded by S.I. Kulveer Singh, who was entrusted with the investigation of the case and, it is, for all practical purposes, the first information recorded in respect of

the accident. Thirdly, in the site plan “Exhibit P-1”, which is heavily relied upon by the counsel for the appellants, the offending vehicle is again clearly mentioned to be a scooter, though the number given is DL-2CJ-3250, which is neither the number given in the DD Entry No.19-A nor the number given in the ‘Asal Tehrir’ and is clearly reflective of the careless and haphazard manner in which the investigation was handled in the instant case.

13. I also see no reason to discard the testimony of PW3 – Vinay Kumar, who has given a vivid description of the accident, merely on account of the fact that the police did not cite him as a witness in the charge-sheet. PW3 – Vinay Kumar, in the course of his testimony, deposed that on the date of the accident at about 5:15 P.M. while returning from Hanuman Mandir, he saw the deceased who was residing in the same locality, that is, Shiv Ram Park, crossing the road when a scooter bearing No. DL-2SJ-3250 coming from the Najafgarh side towards Nangloi at a very fast speed hit against him. He further deposed that the deceased had received serious head injuries and injuries on other parts of his body. He stated that the person driving

the scooter was driving at a high speed and the said accident had been caused due to the fast driving of the aforesaid scooter. He had gone to inform the family members of the deceased and had accompanied the wife of the deceased Smt. Savitri Bansal (PW-1) to the hospital. He further deposed that he did not see any person at the hospital, but the police had come to the hospital and inquired from him and he had told the police whatever facts he knew. In cross-examination, he categorically denied the suggestion that the deceased was not hit by scooter No. DL-2SJ-3250, but was hit by car No. DL-2CD-3249 or that he had given the number of the offending scooter as DL-2SJ-3250 at the instance of the respondents/claimants. He stated that he was not related to the deceased or to the respondents nor he was on visiting terms with them but was merely residing in the same locality.

14. The testimony of PW1 – Smt. Savitri Bansal, the wife of the deceased, is also significant. This witness testified that though she was not an eyewitness to the accident, she had been informed about the occurrence of the accident in front of Hanuman Mandir in which her husband had been hit by a two-wheeler scooter, and on receipt of

this information about accident she had gone to the hospital where her husband was admitted, and where she found the PCR Police and the appellant No.2. She stated that she could identify the appellant No.2, who had apologized to her for having caused the accident. Though, extensively cross-examined by the counsel for the appellants, the testimony of this witness remained unshaken. She categorically denied the suggestion put to her that the appellant No.2 had not caused the accident and instead had taken the injured to the hospital, and that she had falsely deposed that the appellant No.2 had apologized to her about the accident.

15. No cogent reason could be pointed out by the learned counsel for the appellants as to why this Court should disbelieve the testimony of PW1-Smt. Savitri Bansal, who had no axe to grind with the appellants, or the testimony of PW3-Shri Vinay Kumar, who was a natural witness to the accident, being a resident of the same locality in which the deceased was residing. Also, no motive could be imputed to PW-3 to enable me to discard his testimony as that of an interested witness or a partisan one. Merely because his name does

not find mention in the list of witnesses drawn up by the Investigating Officer does not appear to me to be reason enough to disregard the statement made by this witness which has withstood the test of cross-examination.

16. As regards the defence plea raised by the appellant No.2, the same as elaborated in his affidavit by way of evidence was that certain police officers posted at Police Station, Nangloi were inimical to him and had fabricated a false case against him under Section 381 IPC, while acting at the behest of the one Shri Harish Singhla. If his version is to be believed, the Dehi Police wanted to pick him up from Bihar in an illegal manner and liquidate him. Apprehending danger to his life, he had requested the C.J.M, Chapara by moving an application on 05.08.2003 to take him in protective custody till he was granted anticipatory bail by the Delhi High Court. The anticipatory bail was granted to him on 21.08.2003 by this High Court and thereafter, he had filed a suit for recovery of damages against H.C.Ramdhari of P.S. Nangloi. It was out of vengeance and animosity that the police of P.S. Nangloi had allowed the real culprit

in the present case to escape and had called him to the Police Station on 12.04.2004, where he was arrested and falsely implicated in this case.

17. The cross-examination of this witness is significant in that it completely demolishes the version given by him in his examination-in-chief. In his cross-examination, he admitted that he was driving the two-wheeler scooter bearing No. DL-2SJ-3250 on 06.04.2004. He further admitted that on the said date he was coming from the Najafgarh side towards the Nangloi side on the said two wheeler scooter. He, however, denied that he had hit a person with his scooter, but stated that he had taken the injured from the accident spot to the hospital on a cycle rickshaw, and again stated that the injured was taken in the cycle rickshaw and he had followed the said cycle rickshaw on his scooter. He admitted that he had met the police at the hospital, but stated that the police did not inquire from him about the accident at the hospital. In further cross-examination he stated that he was called to Police Station, Nangloi on 12.04.2004 and was falsely implicated in this case, but admitted that he did not make any

complaint to any senior officer regarding his false implication in the case.

18. The appellant No.1 – Shri Ganga Sagar Sharma, who appeared in the witness-box as RW5, in the course of his cross-examination, corroborated the fact that on 06.04.2004, the appellant No.2 had taken his scooter from him. He also stated that on 13.04.2004 he got the aforesaid scooter released on superdari.

19. Thus, in my view, it stands established on record that on the date of accident the appellant No.2 - Shri Pankaj Kumar Verma, who was driving the scooter of the appellant No.1 near Hanuman Mandir had hit the deceased with his aforesaid scooter. The record also shows that he did not take the deceased to the hospital as the M.L.C. reflects that it was the P.C.R. Police which took him to the hospital. There is, however, no manner of doubt that he went to the hospital where he tendered an apology to the widow of the deceased for having caused the accident and furnished his name, address etc. to the police officials present there. PW1-Smt. Savitri Bansal has clearly stated that she can identify the person who had tendered an apology to her at the

hospital. The DD entry being Entry No. 19-A clearly mentions that it was a scooter which had caused the accident though the number of the scooter is incorrectly mentioned in the said D.D. entry. The 'Asal Tehrir' however mentions the correct number of the scooter, which was subsequently requisitioned by the police and taken into custody, and thereafter released to the owner of the scooter on superdari. The latter has corroborated that he had given the scooter on the date of the accident to the appellant No.2. The learned counsel for the appellants has also in my view failed to establish any nexus between the suit instituted against Head Constable Ramdhari, and the investigation of FIR No.287/2004 pertaining to the present case. I, therefore, see no reason to interfere with the findings of the learned Claims Tribunal with regard to the involvement of the offending vehicle in the accident.

20. Although, a number of grounds were taken into the appeal, the only ground urged by the learned counsel for the appellants was with regard to the non-involvement of the offending vehicle in the accident. Since I have held that the offending vehicle was involved in

the accident, nothing further survives to be considered in the present appeal.

21. The appeal is accordingly dismissed as being devoid of merit. The appellants are directed to deposit the award amount in this Court within thirty days from the date of the passing of this order.

22. Records of the learned Tribunal be sent back to concerned Tribunal forthwith.

**REVA KHETRAPAL
(JUDGE)**

August 19, 2011
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