

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

Date of decision: 6th August, 2012

+ **FAO 23/2000**

N.K.MUDGAL Appellant
Through: Mr. Lakhmi Chand, Adv.

versus

JAI PRAKASH & ORS Respondent
Through: Ms. Anshu Saxena, Adv. for R-2.
Mr. Kanwal Chaudhary, Adv. for R-3.

+ **MAC.APP. 292/2012**

NK MUDGAL Appellant
Through: Mr. Lakhmi Chand, Adv.

versus

JAI PRAKASH GUPTA & ORS Respondent
Through: Ms. Anshu Saxena, Adv. for R-2.
Mr. Kanwal Chaudhary, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL 5020/2012 (Delay) in MAC APP.292/2012

1. Appellant N.K. Mudgal initially preferred only one Appeal against a judgment dated 02.09.1999 whereby two Claims Petitions, one filed by N.K.Mudgal (R1/30/90) and the other filed by Respondent No.1 Jai Prakash Gupta (R1/47/91) were decided. The Claims Petition filed by the Appellant was dismissed whereas the Claims Petition filed by Jai Prakash Gupta was allowed.

2. Since the Appellant N.K. Mudgal ought to have filed two separate Appeals, the second Appeal being MAC APP 292/2012 was filed after a great delay.
3. In view of the facts that challenge is on common ground, the delay of 4487 days in filing MAC APP.292/2012 is condoned.
4. The Application is allowed.

FAO 23/2000 and MAC 292/2012

5. An application under Section 166 of the Motor Vehicles Act, 1988 (the Act) was filed by the Appellant claiming a compensation of Rs.20 lacs on the ground that on 12.07.1990 at about 9:00 P.M. he was on his way back from his office to his residence at Sreshtha Vihar, Delhi-92. When he reached the crossing of Sreshtha Vihar, he was hit by the offending two wheeler No.DDJ-8588, which was driven by the first Respondent Jai Prakash Gupta at a very fast speed and in a rash and negligent manner. He gave the details of the injuries suffered by him in the accident and the loss sustained.
6. Similarly, another Claim Petition under Section 166 of the Act was preferred by the First Respondent Jai Prakash Gupta wherein it was averred that on 12.07.1990 at about 8:25 P.M. the First Respondent was returning to his home in Turkman Gate from Ghaziabad. When he was at the intersection of crossing of Sreshtha Vihar, the Appellant while riding on his two wheeler DDE-9900 suddenly took a right turn for going inside Sreshtha Vihar and hit against his scooter DDJ-8588. He also gave the details of the injuries and the loss suffered by him.

7. It is urged by the learned counsel for the Appellant that from the evidence produced during inquiry in the two Claim Petitions, which were consolidated, it was established that the accident was caused on account of rash and negligent driving of two wheeler No.DDJ-8588 by the First Respondent Jai Prakash Gupta. In any case, it was a case of contributory negligence and the First Respondent and his Insurer ought to have been made liable to pay the compensation.
8. The Claims Tribunal discussed the question of negligence at length and opined that the accident was caused on account of Appellant's own negligence and that the First Respondent was not to be blamed for the same. The Claims Tribunal accordingly granted a compensation of ₹30,000/- in favour of the First Respondent. Paras 25 to 31 of the impugned judgment are extracted herunder:-

“25. N.K.Mudgal was coming from the side of Delhi. Jai Parkash was coming from the side of Ghaziabad. Both were on their respective scooters. It was 12.7.90 and the time was in between 8.30 PM to 9 PM. N.K. Mudgal filed his WS on 23.2.93. N.K. Mudgal filed his replication on 1.8.94 in the petition filed by him. I am deliberately mentioning the dates. The purpose is to find out as to which particular claimant has tried to make material improvements at the time of recording of his statement. After all, the pleadings give some idea of the pleas of the parties. In M/s Keshav Metal Works vs. J.K. Verma 1994 RLR 126, it was held by our own Hon'ble High Court that replication is a part of pleading and can be looked into.

26. Now in the preset case, N.K.Mudgal was blaming Jai Prakash for the accident. On the other hand, Jai Parkash was putting the blame on N.K. Mudgal. Both of them were aware of their respective cases. They were required to lead best possible evidence.

27. N.K.Mudgal has appeared as his own witness and has examined Sheetal Prasad (PW3). Both these persons had appeared before the criminal court. The criminal court did not believe these witnesses so far as the manner of accident is concerned. This is evident from the judgment dt.14.1.98 (Ex.P30). Here also I am unable to accept both these witnesses.

28. To start with N.K. Mudgal did not mentioned in his petition that the head light of scooter of Jai Parkash Gupta was not on at the time of accident. In order to justify his plea, he tried to improve his version by stating that the head light of scooter of Jai Parkash Gupta was not on. The petition was filed after 2 months of the accident. It cannot be said that N.K. Mudgal was not aware of the manner of accident or was not fit to understand the contents of petition. In the cross-examination, he has categorically admitted that he had gone through the petition before signing it. In the petition as well as WS filed by Jai Parkash, he (Jai Parkash) had given his version of the accident. According to him, the accident had taken place because of the fact that N.K. Mudgal had taken a right turn without observing traffic rules. N.K. Mudgal although filed his WS as well as replication, yet did not specifically controvert these facts. It was within his knowledge. It was for him to deny this particular fact. N.K.Mudgal has placed on record photo state copy of the site plan prepared by IO. It has been relied on by him. Therefore, it can be used against him without formal proof. This site plan is now exhibited as Ex.C1. This particular document goes a long way to establish that N.K.Mudgal was at fault and he is to be blamed for this accident. In the moring, Sh. N.K. Goel, Adv .for N.K. Mudgal was present. It was enquired from him as to from which side N.K.Mudgal was coming. It was submitted by him that N.K.Mudgal was coming from the western side. It we have a look at Ex.C1, it will be clear that N.K.Mudgal was to take a right turn. In the cross-examination, it was enquired from him as to whether he was to take a right turn or not. N.K. Mudgal denied that he was to take a turn after about 50 yards from the place of accident. Ex.C1 belies N.K.Mudgal. The place of accident as shown in Ex.C1 shows that N.K.Mudgal was to take a right turn. Thus, I am of the view that N.K.Mudgal was conscious enough and knew the implication of his not admitting the fact that he was to take a right turn near the place of accident. When a witness tries to conceal his fault and in the same breath, tries to

high light the fault of other party by making material improvements, he (the witness) renders himself unreliable. The evidence of the witness is required to be analysed on the anvil of objective circumstances. It is not the ipse dixit of the witness which prevails. Sheetal Prasad (PW3) was disbelieved by the criminal court for valid reasons. It was not clear as to how the police came to know about his presence. It has come in the statement of N.K.Mudgal (PW1) that the visibility was upto 20'. It was hazy on that day. Sheetal Prasad (PW3) on the other hand has stated that the khoka from where he had witnesses the accident was about 30/40 yards. I repeat 30/40 yards. Then, how he was in a position to see the accident in view of the poor visibility.

29. Now in the present case, N.K.Mudgal and Jai Parkash were taken to hospital by the police. Both of them were admitted in the hosp. This is evidence from the MLCs copies of which are available on record. FIR Ex.PW2/A also clarifies the position. Jai Prakash Gupta was found fit for statement at about 6.15 PM on 13.7.90 See Ex.P-31. It is not the case of N.K.Mudgal that his statement was recorded before 6.15 PM on 13.7.90. No other eye witness was available to the police. Then why the statement of Jai Parkash Gupta was not recorded by the police particularly when it was not clear to the police as to who was at fault. If we read the judgment Ex.P30, it will be clear that statement of N.K.Mudgal was recorded on 25.7.90. The police should have recorded the statement of Jai Parkash Gupta when he was found fit for the same. The police officials did not do so for the reasons best known to them. I need not comment as the Ld. MM, while acquitting Jai Parkash Gupta had condemned the investigating agency. Before the criminal court, the police officials had appeared as a witness and that court had the opportunity to analyse the statement of police officials and other witnesses.

30. Jai Parkash Gupta has appeared as PW2 and has examined Manoj Khattar, RW1. Both these witnesses were cross-examined at length. Ld. Counsel for N.K. Mudgal was unable to pin point any flaw in the statements of these witnesses. Merely because Jai Parkash Gupta has filed the petition after 9 months of the accident does not mean that his version is to be rejected out rightly on that score. Manoj Khattar had also appeared before criminal court to substantiate the defence of Jai Parkash Gupta. For valid reasons,

he was believed by the ld. M.M. Now also, there is no material to jettison his statement.

31. In view of the above discussion, I hold that the accident had taken place entirely due to fault of N.K. Mudgal.”

9. The Claims Tribunal gave reasons for preferring Respondent No.1's testimony as against the Appellant's version. The Claims Tribunal noticed that for the reasons best known to the IO of the criminal case, the First Respondent's statement under Section 161 Cr.P.C. was not recorded on the date of the accident though, he was fit to make the statement and the Appellant's statement was recorded only on 25.07.1990.
10. The Claims Tribunal observed that the Appellant tried to make material improvements in his statement recorded in the Court with regard to the site of the accident. From the site plan prepared by the IO in the Claims Petition, it is evident that the accident took place just at the crossing of Sreshtha Vihar. The Appellant's plea during his evidence that the accident took place 50 yds. before Sreshtha Vihar traffic point was disbelieved and was held to be palpably false. The Claims Tribunal observed that the Appellant made improvements in stating during evidence for the first time that the head light of Jai Prakash Gupta's scooter was not on as these facts were not mentioned in the Claim Petition filed by him or even in the written statement filed in the Claims Tribunal filed by Jai Prakash Gupta.
11. Apart from this, other reasons have also been given by the Claims Tribunal which, in my view, are quite convincing. The Claims Tribunal rightly concluded that the accident was caused on account of rash and negligent driving of the two wheeler No.DDE-9990 by the Appellant and thus rightly made him liable to pay the compensation.

12. No other argument has been raised at the time of hearing.
13. In view of the foregoing discussion, the Appeals are devoid of any merit; the same are accordingly dismissed.
14. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 06, 2012

vk