

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

+ FAO 41/2002

Date of Decision: 10.10.2012

P.N.HANDA & ANR. Appellant

Through: Mr.Bharat Arora, Adv.

Versus

SANDEEP SHARMA Respondent

Through: Ms Neerja Sachdeva, Adv. for
R3

AND

FAO 42/2002

P.N.HANDA Appellant

Through: Mr.Bharat Arora, Adv.

Versus

SANDEEP SHARMA & ORS. Respondent

Through: Ms neerja Sachdeva, Adv. for R-
3

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. These two appeals are being disposed of vide this common judgment as these arise out of the common judgment dated 26.11.2001 of Judge, MACT, New Delhi in suits bearing No. 310/1992 and

334/1992. Both these suits were filed seeking compensation on account of the accident that took place on 12th May, 1992.

2. The appellant herein had filed suit no. 310/1992 against the respondent Sandeep Sharma, who had filed suit No. 334/1992 against the appellant and his wife. Both, the appellant and the respondent were driving their respective scooters, when accident took place between them on 12th May 1992. They both sustained injuries in the accident. They both filed suits for claiming compensation against each-other. The police had also registered a case against the appellant under Section 279/338 IPC wherein ultimately the appellant came to be acquitted by the Metropolitan Magistrate. Both the parties contested their respective suits. The learned Judge, MACT vide the impugned judgment, dismissed the suit of the appellant herein; whereas awarded compensation of Rs.12,000/- to the respondent Sandeep Sharma against the appellant. The appellant has challenged the findings of the Judge, MACT on both these counts by way of these two separate appeals.

3. These appeals have been filed on the grounds that the learned Judge, MACT has erred in not taking note of the fact that the accident was caused due to rash and negligent driving of the scooter being driven by respondent Sandeep Sharma and that the appellant was acquitted by the Magistrate in the police case registered against him under Section 279/338 IPC. It is submitted that his acquittal in the aforesaid criminal case would testify that the accident was not caused

because of his rash or negligent driving, but that of the respondent Sandeep Sharma. The learned counsel submitted that the appellant was driving his scooter at slow speed on the left side of the road when his scooter was struck from behind by the scooter of respondent Sandeep Sharma and the same stands proved from the mechanical inspection reports of the scooters, as per which damage caused to his scooter was on the right side and to that of respondent Sandeep Sharma on the front and the left side. It is also submitted that the appellant suffered disability to the extent of 50% and was entitled to compensation to the extent of Rs.10,00,000/-.

4. I have heard the learned counsel for the petitioner and the respondent National Insurance Company and perused the records.

5. The plea that the appellant was driving his scooter at slow speed on the left side of the road and was struck from behind by the respondent Sandeep Sharma and as a result of which his scooter fell on the right side and that of the respondent on the left side and that the same would be testified from the mechanical inspection reports, has been elaborately dealt with by the learned Judge, MACT. From the evidence which was led by the parties, and which has been rightly appreciated by the learned Judge, MACT, it is noticed that the appellant had deposed that he was driving his scooter at slow speed on the left side of the road when the scooter being driven by respondent hit his scooter with big force. He has not deposed to the manner in which the accident took place. He did not utter a single word that the

scooter being driven by the respondent Sandeep Sharma hit his scooter from behind. On the other hand respondent Sandeep Sharma had categorically stated about the appellant having overtaken his scooter from the left side and tried to take sudden turn on the right side. This part of his testimony remained unchallenged throughout. The learned Judge, MACT has rightly observed that if the scooter driven by the appellant on the left side was struck from behind by the respondent Sandeep Sharma, then the damage to the scooter of the appellant would have been on the rear portion and to the scooter of the respondent on the front side. As against this, the damage which appeared on the appellant's scooter was on the right side and that on the scooter of the respondent on the front and left side. The mechanical inspection report, relied by the appellant, rather lends credence to the version of the respondent Sandeep Sharma that the appellant had overtaken the respondent's scooter from the left side and the accident took place when he tried to take right turn towards Princess Park. That is how the damage appeared on the right side of the scooter of the appellant and on the front and left side of the scooter of the respondent. I do not see any illegality in the appreciation of the evidence by the learned Judge, MACT.

6. Further, the plea that the appellant was acquitted of the criminal case under Section 279/338 IPC, the learned Judge, MACT has elaborately dealt with the same in the following manner:

“The ground for acquittal was that there was lot of contradictions/discrepancies in the testimony of witnesses and I.O. had not fairly investigated the case. The accused therein (P.N. Handa) was thus given benefit of doubt and acquitted. The said prosecution and subsequent acquittal will not have much bearing on the aspect of negligence in the accident, as the standard of proof in a criminal case is ‘of beyond doubt’ while in civil proceedings, it is to rest on the ‘preponderance of probability.’ If any authority is needed, a reference may be made to a Judgment in **Union of India & another Versus Mrs. Saraswati AIR 1996 Guhati 31**. Similarly in **Abdul Rashid Vs. Shel Prabha (1992) 1 ACJ 441**, it was held by Madhya Pradesh high Court that degree of proof of negligence in a civil suit and criminal case is different. Thus because of higher degree of proof, conviction in criminal case would conclude the negligence in civil case but acquittal in criminal case would not necessarily absolve the driver on negligence in civil case.”

7. There is no illegality or perversity in the above reasoning given by the learned Judge, MACT and I find no reason to disagree with him that the acquittal of the appellant on account of benefit of doubt, was not enough to absolve the appellant of his liability of compensation.

8. The plea that the appellant had suffered disability to the extent of 50 per cent, itself is no ground to entitle him to the award of compensation, when, as discussed above, the accident was seen to have

been caused due to his own negligence and not that of the respondent Sandeep Sharma. The learned Judge, MACT rightly recorded the appellant to be not entitled to any compensation from the respondent.

9. In view of my above discussion, I do not see any illegality or perversity in the appreciation of evidence by the learned Judge, MACT that the accident took place due to rash and negligent driving of the offending scooter by the appellant. The compensation that has been awarded to the respondent of Rs.12,000/- cannot be said to be unjust or unreasonable, having regard to the nature of injury suffered by him.

10. I do not see any infirmity in the impugned judgment on any count. Both the appeals are devoid of any merit and are hereby dismissed.

M.L. MEHTA, J.

OCTOBER 10, 2012

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