

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

Date of decision: 27th August, 2012

+ **FAO 83/2002**

RAJENDER PRASAD DABAS Appellant
Through: Mr. Jai Gupta, Adv.

versus

UOI & ORS. Respondent
Through: Mr. Sameer Agrawal, Adv. for R-1.
Mr. Brij Bhushan Solanki, 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)

1. The Appellant Rajender Prasad Dabas impugns a judgment dated 20.10.2001 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby his application under Section 166 of the Motor Vehicles Act, 1988 (the Act) for grant of compensation in respect of the injuries suffered by him in a motor vehicle accident which occurred on 05.01.1989 was dismissed on the ground that the Appellant failed to establish that the accident was caused on account of rash and negligent driving of car No.BA-83B-30023K, driven by Respondent No.3.
2. The manner of the accident, according to the Appellant as stated in the Claim Petition is extracted hereunder:-

“The petitioner was driving a scooter (LM) Vespa Regs. No.DDI-6168 inside the Rajputana Rifles Regimental Centre near the MI Room when he was about to enter the Mandir Road linking the Ring Road to the Station Road from the third approach road from the Main Gate of the centre, he was hit by the offending DD vehicle BA No.83B 30023K, Car Ambassador belonging to the respondent No.1 being driven by respondent No.3 at the instance of the Respondent No.2 whose staff car it was whose family was travelling by it. This vehicle was travelling at a very high speed of approximately 80 KMPH and that too on the wrong side (right) of the said road. The petitioner sustained grievous injuries i.e. compound potts fractures and dislocation of the ankle (left) on account of the said accident which was wholly due to the fault of the driver of the offending vbehicel and which also resulted in the damage to the scooter.

It is further alleged that the accident took place within the jurisdiction of PS Dhaula Kuan and the petitioner sustained compound potts fracture (i.e. a fracture of Lower end of the Fibula usually dislocation of ankle) and dislocation of ankle and the petitioner was treated by the doctors of the Army Hospital, Delhi Cantt and he remained admitted there for 57 days from 5/1/89 and was discharged on 3/3/89. By way of present petition, petitioner claimed ₹2 lacs as compensation.”

3. Respondents No.1 and 2 filed a joint written statement whereas Respondent No.3 filed a separate written statement. In Para 23 of the respective written statements they gave the manner of the accident as under:-

Written statement by Respondents No.1 and 2:-

“23. That the contents of para 23 of the petition are wrong and denied. It is wrong that the vehicle was being driven at the instance of respondent No.2, and that his family was travelling in the Ambassador car. It is further denied that the car was being

driven at a speed of 80 KMPH or rashly and negligently. It is also denied that the petitioner has suffered any disability on account of the alleged fracture. However, petitioner be put to strict proof of the averments made therein. The actual and true facts are that the respondent's car was going to Teen Murti Marg from Army Hospital vis Raj Rif Centre and the car was being driven at a normal speed with due compliance to the traffic rules. The petitioner came from the small lane at high speed driving his scooter rashly and negligently in violation traffic rules and regulations. The petitioner did not blow any horn but entered the main road at a very high speed and on seeing the respondents vehicle (car) could not control his scooter, this resulting in the accident, then though the respondent No.3 who was driving the vehicle stopped his vehicle by applying brakes.

It is further submitted that the accident was caused solely due to the rash and negligent driving of the petitioner, who was driving his scooter rashly and negligently in violation of traffic rules."

Written statement by Respondent No.3:-

"23. That para 23 and its sub paras are all wrong and denied. It is wrong to say that the accident has caused due to the rash and negligent driving of the answering respondent. However, it is submitted that the answering respondent was going on the main road whereas the petitioner was coming from a side land without caring and watching the traffic on the main road on his right dashed into the offending vehicle and got injuries. It is further submitted that the petitioner came rashly and negligently without blowing any horn entered the main road at a high speed and on seeing he car could not control his scooter resulting into the accident."

4. Thus, all the three Respondents specifically stated about the manner of the accident. The Appellant was permitted to file Replication. The specific averments made as to the manner of the accident that the

Appellant himself was to be blamed were not traversed specifically or by necessary implication. Paras 22 and 23 of the written statement were replied as under:-

“22-23. That the contents of para no.22 to 23 of the WS are wrong and denied. That the accident took place due to the rash and negligent driving of respondent no.3 at the instance of respondent no.2 who’s family was travelling in the car at that time. That the contents of the claim application para No.22 and 23 are reiterated.”

5. Not only that the Appellant did not traverse the specific averments made by the Respondents that the accident was caused solely on the ground of his own rashness and negligence, the Appellant himself proved DD No.39 recorded in PP Dhaula Kuan in respect of the accident as Ex.PW-3/A. This DD in fact is recorded on the basis of Appellant’s own statement. He informed the police officer that on that day (05.01.1989) he was proceeding from Parade Ground Raj Rifle to the Mess. When he reached near MI Room there were lots of bushes near the corner of the road. On account of the bushes, he and the driver could not see each other’s vehicle; as a result of which the accident occurred.
6. In his statement made to the police, the Appellant did not blame the driver of the car for the unfortunate accident. The Claims Tribunal noticed that it was not the Appellant’s case that he was misguided by anybody to make a statement to the police on the basis of which DD Ex.PW-3/A was recorded. He did not make any complaint to the police officer for registration of any case. Thus, non-traversal of the averments made in the written statement made by the Appellant coupled with the

DD Ex.PW-3/A, the Claims Tribunal declined to believe the Appellant's version of the accident as set up in the Claim Petition.

7. The conclusion reached by the Claims Tribunal is logical and reasonable. The same does not call for any interference.
8. The Appeal is devoid of any merit; it is accordingly dismissed.
9. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 27, 2012

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