

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

Date of decision: 18th September, 2012

+ **MAC.APP. 329/2004**

UOI & ORS.

..... Appellants

Through: Mr. Jaswinder Singh, Adv.

versus

JAISHREE AGGARWAL & ORS.

..... Respondents

Through: Mr. Subhash Garg, Adv. for R-1 to R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Union of India impugns a judgment dated 21.02.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹30,25,000/- was awarded in favour of Respondents No.1 to 5 for the death of one Jai Kumar Aggarwal who died in a motor vehicle accident which occurred on 09.02.2002 and involved an army truck No.00D1-34130E-CF (Army Truck) owned by the Appellant.
2. Mr. Jaswinder Singh, Advocate learned counsel for the Appellant has very passionately canvassed before me that the finding on negligence reached by the Claims Tribunal was perverse. Since there was no negligence on the part of Respondent No.6, the Appellant's driver, the Appellant had no liability at all to pay the compensation.

3. It is urged by the learned counsel for the Appellant that as per the Claimant's case (Respondents No.1 to 5) the deceased Jai Kumar Aggarwal was proceeding on his two wheeler No.DL-65A-8707 when he was struck by the offending vehicle from behind. Had it done so, the rear wheel of the offending vehicle would not have run over the deceased. Since it is admitted case of the parties that the deceased was run over by the left rear wheel, the Appellant's case that the deceased himself struck against the rear wheel of the offending vehicle, which was taking a turn on the left side towards New Delhi Railway Station is more probable and plausible. He contends that the Claims Tribunal largely relied on the FIR recorded on the basis of the statement of Constable Purshotam, who was allegedly on duty at New Delhi Railway Station at the time of the accident. Constable Purshotam was not produced as a witness by the Claimants and thus, the Claims Tribunal ought not to have relied on the FIR to form an opinion that the Respondent No.6 (the driver of the army truck) was responsible for causing the accident by his rash or negligent driving.
4. Learned counsel for the Appellant places reliance on a judgment of this Court in *Geeta Rani Gupta & Ors. v. DTC & Anr.* 1993 ACJ 408 where it was held that the circumstances must be taken into consideration to render finding on negligence.
5. While dealing with the issue of negligence, the Claims Tribunal held as under:-

“14. From the evidence on record, it has to be seen whether respondent no.3 was driving the vehicle rash and negligent manner which hit the deceased or not. To prove the negligence of respondent no.3, the petitioner has examined one eye witness

Rakesh Kumar Gupta, PW.3 and has also placed on record copy of FIR Ex.PW-1/3, pm report Ex.PW-1/1 and also one of the annexures with MLC of Lady Harding Hospital. On the other hand, ld. Counsel for respondents have relied upon the testimony of one of eye witness Sh. Ramdev Yadav as RW-2 who has been examined in the defence of respondent no.1. Firstly, FIR Ex.PW-1/3 is looked into. This FIR has been registered on the complaint of Ct. Purshotam No.669/C of PS Paharganj. This FIR states that this Ct. Purshotam was on duty from 8 a.m. to 8 p.m. at New Delhi Railway Station at about 3.20 p.m. he was on duty at Mujai Chowk, near Rly Station. He saw a motorcycle No.DL6SA 8707 going from C.F. road to Connaught Place in front of entry gate of railway station. In the meanwhile, one army vehicle No.000 DL-34013E-CF came from Pahar Ganj side and all of a sudden it turned towards entry gate of railway station. In this process motorcycle No.DL-6SA-8707 came under the rear left wheel of the army truck and rider sustained injuries. It is further stated that he accompanied Santosh Driver of offending vehicle with the injured to Lady Harding Hospital where Dr. Sunita declared 'Brought Dead'. It has further been stated that the accident has taken place due to the rash and negligent driving of driver Santosh of Army vehicle. He was produced before the duty officer for further action. The MLC with annexure-1 also shows that the injured was brought dead by Ct. Santosh Driver of the Army vehicle. Sh. Rakesh Gupta PW3 has also attributed the negligence to driver of army vehicle. He has stated in his testimony that he witnessed the accident on 9.2.2002 when has gone to supply various items to the shopkeepers in Paharganj. He has stated that the army truck was being driven rashly and negligently which hit the motorcyclist from behind as a result of which the motorcyclist fell down on the road and came under the rear left wheel of the army truck. He received multiple injuries and succumbed to the same. He was removed to hospital by army official and police.

15. From the contents of FIR Ex.PW-1/3, the accident is stated to have occurred due to rash and negligent driving of offending vehicle driven by Ct. Santosh, driver of army vehicle who is the respondent no.3. The facts stated by Ct. Purshotam in the FIR corroborated by Rakesh Kumar Gupta PW.3. The defence witness Ram Dev Yadav RW2 has stated in his testimony that army truck was standing at the red light, as soon as there was green signal it

entered the gate of Rly station, behind the said vehicle one motorcycle alongwith a pillion rider hit the army truck o the rear side and rider came under left side of the said vehicle. This stand is totally contrary to the contents and facts stated in FIR Ex.PW-1/3. This FIR does say that there was pillion rider, but this witness has stated that pillion rider was there. Since this witness has taken a totally contrary stand against the contents of the FIR, this witness cannot be believed at all. Therefore, his testimony is rejected. Similarly, facts stated by Santosh PW-3 cannot be believed as they also meet the same fate.

16. The arguments which has been advanced on behalf of ld. Counsels for respondents is that contents of FIR cannot be read as this witness has not been examined EWx.PW-1/3 i.e. FIR has to be relied upon as the proof in Motor Accident Claim cases, is not the proof beyond reasonable doubts. It is well settled in MACT that the standard of proof is not that of a criminal case where guilt has to be proved beyond reasonable doubt but on the contrary, the standard of proof is that there must be prima facie evidence to show that negligence was there on the part of user of motor vehicle. In the present case, FIR Ex.PW-1/3 which has been registered at the instance of Ct. Purshotam prima facie has to be taken as a true version stated in it. Even if he has not been examined/cross-examined, it cannot effect the case of the petitioners. This document Ex.PW-1/3 prima facie shows that respondent no.3 was driving the vehicle in a rash and negligent manner which hit the motorcyclist who received injuries and succumbed to the same. The contents of this FIR Ex.PW1/3 has been corroborated with the testimony of Rakesh Gupta PW-3 who is stated to be one of the eye witness. Further, annexure-1 of Lady Harding Hospital and post mortem report Ex.PW-1/1 strengthen the case of the petitioner. Therefore, evidence on record is sufficient t connect respondent no.3 with the accident. Therefore, issue no.1 is decided in favour of the petitioners and against R.3.”

6. Rakesh Kumar Gupta an eye witness, who was examined as PW-3 by the Claimants testified that on 09.02.2002 at about 3:10 P.M. he had gone to Paharganj, opposite main gate, New Delhi Railway Station to supply various items to his customers, that is, the shopkeepers in front of the

New Delhi Railway Station. He noticed that an army truck being driven in a rash and negligent manner came from behind and hit the motorcycle No.DL-6SA-8707 causing injuries to its rider (Jai Kumar Aggarwal). In cross-examination, the witness admitted that the motorcycle had struck against the rear left wheel of the army truck.

7. The driver of the army truck filed his Affidavit by way of evidence and testified that on the date of the accident he was waiting at the traffic point; when the signal turned green, he negotiated to enter the 'IN' gate of New Delhi Railway Station. He gave the signal to take a left turn and was on the extreme left side of the road. When half of the truck driven by him had already entered the Railway Station, he felt some vehicle had struck against the army truck. He stopped his vehicle and on coming out noticed that a motorcyclist had struck on the rear portion of the army truck. He testified that he could not see the motorcycle at the time of the accident because he had already entered in the Gate of New Delhi Railway Station. He deposed that he along with a civilian, namely, Ramdev Yadav removed the injured to Sucheta Kriplani Hospital. In cross-examination Respondent No.6 (the driver of the truck) denied the suggestion that he took a sharp left turn in violation of the traffic rules without giving any signal and hit the motorcycle. He showed his ignorance if the motorcyclist was on the left side of his vehicle when he was taking the left turn. He showed his ignorance if Rakesh Kumar Gupta (PW-3) also saw the accident.
8. Ramdev Yadav who was examined by the Appellant and Respondent No.6 deposed that he noticed the army truck standing at the traffic signal. When the signal turned green, he entered the gate of the Railway Station.

A motorcyclist rammed in the rear side of the army truck and was crushed under the wheels.

9. First of all, I may say that it is not only driving at a high speed which is a criteria for determination of rash or negligent driving. In cross-examination PW-3 Rakesh Kumar Gupta gave the speed of the army truck as 30-40 km/ph and the speed of the motorcycle as 20-25 km/ph. The speed of a vehicle is given by standard approximation only. It is true that if a big vehicle like an army truck strikes its front portion against a two wheeler then the two wheeler or its rider may flung off the two wheeler, may be crushed by the front wheels of the truck. There is a remote possibility of him being run over by the rear wheels. In PW-3's testimony when he stated that the motorcyclist was hit from behind it did not necessarily mean that the front portion of the truck collided against the rear side of the two wheeler. A two wheeler can also be hit by the front left side of the heavy vehicle and ultimately the rider could be run over by the rear wheels. However, it is not at all conceivable that a two wheeler would come from behind and dash against a heavy vehicle like an army truck and would be run over by the rear wheels. A two wheeler has to be much ahead, at least near the left middle portion of a heavy vehicle so as to be run over by the rear wheel of a bigger vehicle. In the circumstances, the testimonies of Respondent No.6 as RW-1 and of Ramdev Yadav are not acceptable.
10. A perusal of the site plan available on the Claims Tribunal's record shows that the army truck took the left turn just at the start of the gate. The version as given in the FIR No.68/2002 which was recorded at 5:35 P.M., that is, just within two hours of the accident made on the statement of

Const. Purshotam reveals that motorcycle No.DL-6SA-8707 was proceeding towards Connaught Place in front of the entry gate of New Delhi Railway Station when the army truck came from behind and took a sudden left turn. The version as given in the FIR to some extent supports the testimony of PW-3 Rakesh Kumar and also explains the dashing of the two wheeler with the rear wheel of the army truck and crushing of the deceased under the rear wheel.

11. Proof of negligence is a *sine qua non* in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) but at the same time, negligence is required to be proved on touchstone of preponderance of probability. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a Claim Petition under Section 166 of the Act for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

12. The observations of the Supreme Court in *Bimla Devi* were referred with approval in a later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.

13. Thus, from the testimony of PW-3 Rakesh Kumar coupled with the FIR recorded on the basis of the statement of Const. Purshotam, site plan and the manner of the accident, it is evident that there was culpable negligence on the part of Respondent No.6, who was the driver of the army truck. *Geeta Rani Gupta* relied upon by the learned counsel for the Appellant is not attracted to the facts of the present case. In that case, the facts were that on the date of the accident, the deceased was going on his two wheeler when he was hit from behind by a double decker bus No.DLP-1487. It was established that deceased Nand Kishore was ran over by the rear left wheels of the bus. This Court observed that if the deceased had been hit from behind by the front left side of the bus, the deceased could have been thrown either on the left or the right hand side of the bus or would have fallen in front of the bus but would not have been crushed by the left rear wheel as there was no evidence on record to suggest that the bus swerved on either side. In the instant case, it is admitted case of the parties that the army truck took the left turn. Thus, *Geeta Rani Gupta* is not attracted to the facts of the present case and is clearly distinguishable.
14. For the reasons stated above, culpable negligence on the part of Respondent No.6, the driver of the army truck owned by the Appellants, is clearly established. The finding on negligence reached by the Claims Tribunal, therefore, cannot be faulted.
15. No other ground has been raised in the Appeal.
16. Consequently, the Appeal fails. The same is accordingly dismissed.

17. The amount of compensation, if lying deposited shall be released in terms of the order passed by the Claims Tribunal.
18. The statutory deposit of ₹25,000/- be refunded to the Appellant.
19. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 18, 2012
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