

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

Reserved on: 17th July, 2012
Pronounced on: 27th August, 2012

+ **MAC APP. 382/2004**

USHA & ORS. Appellants
Through: Ms. Neha Gupta, Advocate

Versus

SATINDER KUMAR & ORS Respondents
Through: Mr. D.K. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is directed against a judgment dated 06.04.2004 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a Petition under Section 166 of the Motor Vehicles Act, 1988(the Act) filed by the Appellants was dismissed.
2. An FIR No.117/1995 was registered in P.S. Paschim Vihar on the basis of statement made by Parveen Kumar. On receipt of DD No.27 dated 23.02.1995 Police Post Miawali Nagar, ASI Ram Niwas reached the spot and found that on the left carriage way of Outer Ring Road leading to Vikas Puri, a two-wheeler scooter No.DL-1SE-6373 and a dead body whose head was crushed were lying. Parveen Kumar (PW3) met the ASI and handed over the driver of the truck No.DHG-5379. He made a statement to the ASI that at about 5:00 pm he along with his uncle Anil Kumar was proceeding to his residence in Nangloi. His uncle Anil

Kumar was driving the two-wheeler No.DL1-SE-6373. He informed that a truck No. DHG-5379 being driven by Satinder Kumar S/o Jagdish R/o Gyan Cement Store, Village Tikri Kalan(who was produced before the IO) while overtaking their two-wheeler from their right side struck against the two wheeler as a result of which they fell down and his uncle's head was crushed under the rear left wheel of the truck. He further informed the ASI that after causing the accident, the truck driver wanted to flee, but he was captured with the help of the public. After recording statement of Parveen Kumar (PW3), the ASI made his endorsement and sent a rukka to the Police Station for registration of a case. A report under Section 173 was filed in the court of Metropolitan Magistrate for prosecution of Satinder Kumar for the offence punishable under Section 279/304A Indian Penal Code. During investigation of the case, the truck was seized from the spot. Its mechanical inspection was carried out on 24.02.1995, the truck was released on *superdari* in favour of Suresh Kumar.

3. Although, a report under Section 173 Cr.P.C. as stated earlier was filed against the First Respondent in the criminal court on 24.03.1995, that is, just one month after the accident, a Claim Petition under Section 166 of the Act was filed by the Appellants, that is, the widow and two minor children of Anil Kumar on 21.07.1995. In the Claim Petition, it was stated that the accident was caused by a truck No.DHG-4131 (and not by truck No.DHG-5379). In the Claim Petition, it was also mentioned that a complaint Ex.PW5/2 was also made by the First Appellant to the DCP, West District, Rajouri Darden as well as the concerned SHO stating that the IO had not correctly recorded the number of the offending vehicle.

4. In the Claim Petition, five Respondents were impleaded, that is, Satinder Kumar, being driver of truck No.DHG-4131; Respondent No.2 Ram Dhan, owner of truck No.DHG-4131; Respondent No.3 Oriental Insurance Company Ltd, its insurer; Respondent No.4 Sandeep Singh, owner of truck No.DHG-5379 and its insurer Respondent No.5, the New India Assurance Co. Ltd. It is noteworthy that the insurance cover of truck No.DHG-5379 admittedly was only for the period from 29.07.1993 to 28.07.1994. Thus, there was no insurance coverage of the truck No.DHG-5379 on the date of the accident which occurred on 23.02.1995. I have consciously mentioned this background as it is necessary in view of the contrary stand taken by the Appellants regarding involvement of the truck in the accident.
5. The Respondent No.1(claimed to be driver of truck No.DHG-4131) in the written statement denied that he caused the accident. He took up the plea that he was falsely involved in the case. The Respondent No.4(who was claimed to be driver and owner of truck No.DHG-5379) also denied the accident and pleaded false involvement in order to extract money from him. The Claims Tribunal framed the following issues:
- “(i) Whether deceased died due to rash and negligent driving of truck No.DHG-4131 by its driver?*
- (ii) Whether petitioners are entitled for claim and if so for what amount and from whom?*
- (iii) Whether the petitioners are the only L.Rs of the deceased?*
- (iv) Relief.”*
6. While dealing with issue of negligence and involvement of the truck No.DHG-4131, the Claims Tribunal by the impugned order held that the accident was not caused by truck No.DHG-4131 but was caused by truck

No.DHG-5379. The conclusion of the Trial Court are extracted hereunder:

“14. Firstly, it has to be seen as to what was the number of the vehicle which has been shown in the petition. If a look is made to para 14 of the petition vehicle no.4131 has been shown as the vehicle involved in the accident. Similarly, para 24 contains truck No.DHG4131 and lastly involvement of vehicle no.DHG5379 has been mentioned at the end of the petition at page No.3. Why this para has been added and why truck No.DHG 4131 has been shown in the petition has not been mentioned by Ld. Counsel for petitioner. Further, if a look is made to the testimony of Parveen Kumar PW4 who was the rider, it is noticed that he has also failed to mention the number of the vehicle. However, he has stated that his statement was recorded on the basis of which FIR was recorded. This is the first statement and the FIR has been proved by H.Ct.Brij Pal PW1 as PW1/A. If a look is also made to Ex.PW1/A, it is noticed that truck No.DHG 5379 has been shown in the said FIR. Even the certified copy of the challan as well as statement of Parveen Kumar PW4 on the basis of which the FIR was registered and challan was filed show that truck No.DHG 5379 has been shown as the vehicle involved in the accident. Even mechanical inspection of this vehicle has been got done. Thus, the fact remains that it is only truck No.DHG 5379 which was involved in the accident. The plea of the petitioner that truck No.DHG 4131 was involved in the accident and he has made a complaint to police official for nothing down the wrong number in the said FIR and record being destroyed cannot come to help him as it is only Parveen Kumar PW4 who was the driver of the scooter on which the deceased was also sitting as pillion rider has himself given the number of the truck as DHG 5379. The truck was taken into possession on the spot and driver of the said truck was arrested on the spot. Thus, the documentary evidence on record shows that it was truck No.DHG 5379 which was involved in the accident and not truck No.DHG 4131. Therefore, truck No.DHG 4131 cannot be connected with the accident. That being so, the petitioner has failed to

prove issue No.1. Therefore, issue No.1 is decided against the petitioner.”

7. It is important to note that no issue was framed that the accident was caused by truck No.DHG-5379 as it was nowhere case of the Appellants that the accident was caused by this truck. Rather, the Appellants came up with a specific case that the truck No.DHG-5379 was falsely involved by the IO with ulterior motive. The Appellants also relied on the complaint Ex.PW5/2 purported to have been made by the First Appellant to the concerned DCP and the SHO. The said complaint is extracted hereunder:

“To

- i) The D.C.P.
District West, Rajouri Garden,
New Delhi-27.*
- ii) The S.H.O.
P.S. Paschim Vihar,
New Delhi-63.*

Sirs,

An accident took place on 23.2.1995 at about 7.45 P.M. and an FIR was registered with the Police Station Paschi9m Vihar, Distt. West, which is registered as FIR No.117/95, U/Sec. 279/304-A IP.P.C. In the said FIR, the number of the truck has been mentioned as DHG-5379 which caused the death of my husband Shri Anil Kumar. In fact, the truck No. involved in the accident was DHG-4131, but the driver was Sh. Satender Kumar which has been correctly mentioned. I came to know this fact when the copy of the FIR was supplied to me by the police. Since then I have been requesting the I.O. to correct the number of the truck in the FIR, who assured me

but till date nothing has been done, so I am making this request to your good office to do the needful and make the correction of the truck No. in the FIR and oblige.

Yours faithfully,

Sd/-

(Smt. Usha)

*Wd/o Late Sh. Anil Kumar,
118/3, Friends Enclave,
Sultan Puri Road, Nangloi,
Delhi-41.*

Delhi.

Dated: 4.7.95''

8. A perusal of the document Ex.PW5/2 extracted above reveals that the complaint was made by Smt. Usha widow of Late Sh. Anil Kumar on 04.07.1995. It is not stated in this complaint as to how the First Appellant came to know that it is not truck No.DHG-5379 but another truck No.DHG-4131 which is involved in the accident. There are curious and strange things to note which highlight a racket to milch the public sector Insurance Companies. It may be noticed that Respondent No.3 the Oriental Insurance Co. Ltd. took one year to file the written statement. Before it could be done its defence was struck off on 05.08.1998. The Trial Court record reveals that the counsel for the Third Respondent (Oriental Insurance Company Ltd.) appeared in the court for the first time on 06.01.1997. An Application was filed by the Respondent No.3(before the Trial Court) for taking on record the written statement filed by the Respondent No.3 on 03.07.2003, that is, after more than six years of the

first appearance on behalf of the Third Respondent and when the case was already fixed for final arguments. Obviously, this Application was dismissed by the Claims Tribunal by an order dated 13.11.2003 and an Appeal against this order was also dismissed. I am convinced that the First Appellant acted fraudulently in league with others to claim compensation from the Respondent No.3 Oriental Insurance Company Ltd. by involving truck No.DHG-4131. The reason involving the truck No.DHG-4131 was very simple, that is, the truck No.DHG-5379 was not insured. I would not go into the question whether there was a deal between the owner of truck No.DHG-5379 and the First Appellant or there were some other reason to involve the truck No.DHG-4131 instead of truck No.DHG-5379. I would pen down a few admitted facts :-

- (i) Statement of PW3 Parveen Kumar (who is the deceased's nephew) was recorded by the police at the spot immediately after the accident;
- (ii) Praveen Kumar claimed the driver, that is, First Respondent herein and the truck was involved truck No.DHG-5379;
- (iii) Truck No.DHG-5379 was seized from the spot by the IO. A site plan was also prepared by the IO on his own observations which shows that the truck No.DHG-5379 was standing at mark "C" in the site plan;
- (iv) The driver of the truck No.DHG-5379, that is, Respondent No.1 was arrested at the spot;
- (v) Truck No.DHG-5379 was seized from the spot and its mechanical inspection was carried out on the next day. It was released on *superdari* on the next day of the accident;

- (vi) A report under Section 173 Cr.P.C. for an offence punishable under Sections 279 and 304-A IPC was presented against the First Respondent in the Court of Metropolitan Magistrate on 24.03.1995, that is, just after one month of the accident;
- (vii) A Claim Petition under Section 166 was drafted on 22.03.2005, that is, two days before the filing of the report under Section 173 Cr.P.C;
- (viii) Cause title and column No.14 and 23 make a mention of truck No.DHG-4131 as the vehicle responsible for causing the accident. At all the three places, the number of the truck has been changed by putting white fluid;
- (ix) In columns No.15, 16, 17 and 23 of the Claim Petition, additions have been made in a different type (which is apparent to the naked eye) by which a story of involvement of truck No.DHG-5379 has been inserted;
- (x) Although, the Claim Petition was prepared on 22.03.1995, but it was presented before the Claims Tribunal only on 21.07.1995, that is, after four months of its preparation;
- (xi) A belated complaint dated 04.07.1995 (Ex.PW5/2 extracted earlier) was made to the DCP and the SHO to create an evidence that truck No.DHG-4131 was involved as against truck No.DHG-5379 involved by the IO;
- (xii) No reason has been given in the complaint dated 04.07.1995 as to how the First Appellant came to know about the involvement of the truck No.DHG-4131;
- (xiii) The Appellant did not pursue the complaint Ex.PW5/2 with the senior police officers and filed the Claim Petition just within two

weeks of making the complaint. In other words, the complaint Ex.PW5/2 was not seriously pursued. Rather, the UPC certificate Ex.PW5/1 shows that this complaint was sent only under certificate of post just to create an evidence that a complaint was made to the senior police officers;

- (xiv) The allegations made in Ex.PW5/2 were very serious because it involved not only prosecution of the right person for an offence punishable under Section 304-A IPC but also the payment of compensation. As stated earlier, there is not even a whisper if any attempt was made to follow the complaint Ex.PW5/2;
- (xv) Further, it may be noticed that PW3 Praveen Kumar who was a witness to the accident and was a pillion rider on the two-wheeler involved in the accident and on whose statement the FIR was registered involving the truck No.DHG-5379 curiously did not mention the number of the offending truck in his statement before the Claims Tribunal and another witness PW7 Anand Sharma was planted, who nowhere figures in the criminal case. It is not known how this witness came in contact with the Appellant to tell them that he was a witness to the accident.

- 9. For the reasons stated above, the conclusion reached by the Claims Tribunal that the truck No.DHG-4131 was not involved in the accident cannot be faulted.
- 10. The question for consideration is whether the Claims Tribunal ought to have passed any order for payment of compensation against the driver and the owner of the truck No.DHG-5379. No issue was framed regarding involvement and negligence of truck No.DHG-5379 because the Appellants never alleged that the vehicle No.DHG-5379 was involved

in the accident. The question of proving its negligence, therefore, did not arise. In a Claim Petition under Section 166 of the Act, a Claims Tribunal is required to hold an inquiry into the claim and to determine the amount of compensation which appears to it to be just. The Claims Tribunal was entitled to go into the question as to the involvement of the other vehicle in the accident and make an award accordingly. But, since the Appellant herself fraudulently tried to falsely involve the truck No.DHG-4131, the Claims Tribunal did not go into the question of rashness and negligence and as to the fact as to who was the driver of the truck No.DHG-5379. Although, as per the criminal case, it was the First Respondent who was arrested at the spot and was ultimately acquitted by the criminal court. The First Appellant herself is responsible for the predicament in which she is placed. No fault can be found with the reasoning of the Claims Tribunal that the vehicle No.DHG-4131 was not involved in the accident.

11. Before parting with the judgment, I may mention that on the very first day, that is, 03.09.2004 when the Appeal was listed, none appeared on behalf of the Appellants. The Appeal was accordingly dismissed for want of prosecution. The Appellants were very leisurely taking the prosecution of the Appeal and not taking steps for service of the Respondents. Ultimately, the Appeal was restored only on 28.04.2008. The Appeal was again dismissed in default on 18.08.2010 and then restored.
12. The Appeal is devoid of any merit; it is accordingly dismissed.

13. A copy of the order be sent to the General Manager, Oriental Insurance Company Ltd. to ensure that its cases are properly represented and the public money is not frittered away.
14. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 27, 2012
pst