

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

Date of decision: 30th July, 2012

+ **MAC. APP. 206/2010**
SANTOSH

..... Appellant

Through: Mr. S.K. Pandey, Adv.

versus

RAVI KUMAR & ORS.

..... Respondents

Through Mr. D.K. Sharma, 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. This Appeal is directed against a judgment dated 30.01.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988 (the Act) preferred by the Appellant was dismissed on the ground that the involvement of vehicle No.DL-6SAA-2115 and negligence on the part of its driver Ravi Kumar, the First Respondent was not established.
2. By an order dated 22.11.2011 an application for additional evidence filed by the Appellant was allowed and the Claims Tribunal was directed to examine Pawan Kumar who was cited as a prosecution witness in the criminal case registered in respect of the accident.
3. The additional evidence has been recorded by the Claims

Tribunal and has been transmitted to this Court.

4. This Court is to determine whether the accident was caused by the two wheeler No.DL-6SAA-2115 being driven in a rash and negligent manner by Respondent Ravi Kumar. If, the question is answered in affirmative, this Court will have to determine the quantum of compensation.

NEGLIGENCE :-

5. During inquiry before the Claims Tribunal, the Appellant examined Dharambir Singh PW-2 who claimed himself to be an eye witness to the accident. The Claims Tribunal rejected his testimony mainly on the ground that his name was not mentioned as a prosecution witness in the charge sheet. The Claims Tribunal observed that Pawan Kumar, who was cited as an eye witness was not examined by the Claims Tribunal. It was further held that as per DD entry recorded immediately after the accident, the information made available to the police was that the accident had been caused by a tempo and not a two wheeler. Thus, the Claims Tribunal concluded that the Appellant failed to establish the involvement of the two wheeler No.DL-6SAA-2115 and negligence on the part of its driver Ravi Kumar, the First Respondent.
6. PW-2 Dharambir Singh filed his Affidavit Ex.PW-2/A testifying that on 22.06.2007 at about 9:55 P.M. the accident was caused by rash and negligent driving by the driver of the

two wheeler No.DL-6SAA-2115. He deposed that after the accident, some people gathered at the spot. One of them made a call to the police. In his further examination on 31.01.2012, the witness deposed that the accident took place while the two wheeler driver was overtaking a tempo from the wrong side. He was cross-examined at length by the counsel for the Insurance Company. He deposed that he would not be in a position to identify the driver of the offending two wheeler.

7. PW-4 Pawan Kumar, another eye witness filed his Affidavit Ex.PW-4/A testifying that on 27.06.2007 at about 9:55 P.M. he was coming from village Barwala and was proceeding towards his residence in Ishwar Colony, Bawana. When he reached near Pooth Khurd, he noticed a motor cycle No.DL-6SAA-2115 was ahead of him and proceeding towards village Bawana. He further stated that the motorcyclist was driving the two wheeler rashly and negligently and struck against a person. On account of the forceful impact, the said person fell down and suffered injuries. He deposed that he left for some personal work and gave his name and address to the people who had gathered there. He testified that ASI Jai Kumar Maan (IO of the case) later on visited his house and he narrated him the manner in which the accident took place.
8. ASI Jai Kumar Maan was examined as PW-5. He investigated the case, recorded statement of Dharambir Singh and Pawan Kumar, eye witnesses of the accident. He also served a notice

under Section 133 of the Act upon the owner Ravi Kumar. Ravi Kumar was later on identified by the eye witnesses and was arrested in this case.

9. Learned counsel for the Respondent Insurance Company argues that in the DD entry it is recorded that one tempo was involved in causing injuries to the deceased. Thus, the involvement of the two wheeler in the accident is ruled out.
10. PW-5 deposed that when he reached the spot no tempo was found present. PW-2 and 4 were categorical that the accident took place while the motorcyclist was overtaking a tempo from the wrong side. The names of the persons who disclosed that the tempo was involved in the accident have not surfaced. Ravi Kumar, the First Respondent, who is the owner of the motor cycle though denied negligence on his part but did not enter the witness box to rebut PW-2 and PW-4's testimony. He has not come forward with any explanation as to why he was falsely involved in the accident.
11. The Respondent Insurance Company has not alleged any collusion between the Appellant and the First Respondent. In a Claim Petition under Section 166 of the M.V. Act, negligence is required to be proved by preponderance of probability. In the absence of any rebuttal to PW-2 and PW-4's testimony, I am inclined to accept their version to hold that the accident was caused on account of rash and negligent driving of motor cycle

No.DL-6SAA-2115 by the First Respondent.

QUANTUM:-

12. The deceased Inder Jeet Singh was employed in DTC. In order to prove the deceased's income, the Appellant examined PW-3 Pyare Lal, Accountant in DTC. He deposed that the deceased was a permanent employee of DTC and was getting a salary of ₹12,762/- at the time of his death. The Salary Certificate was proved as Ex.PW-3/A. The deceased's date of birth was 06.07.1962. Thus, he was aged a little less than 45 years on the date of the accident.
13. This Claim Petition has been filed only by the deceased's widow. The deceased was survived by his widow, the Appellant, two sons and a daughter. An Affidavit was filed that the daughter is already married and well settled and that the two sons are also well settled.
14. During hearing of the Appeal, it was stated by the learned counsel for the Appellant that a no objection was filed by other legal heirs.
15. Considering the age of the deceased to be a little less than 45 years, the Appellant would be entitled to increase of 30% towards future prospects in the deceased's income to compute the loss of dependency. Since there was only one dependent, the deduction towards the personal and living expenses would

be one-half. Applying the multiplier of '14' the loss of dependency would come to ₹ 13,57,210/- (12,762/- x 12 – 4,000/- (tax) + 30% x 1/2 x 14).

16. On adding a sum of ₹25,000/- towards loss of love and affection, ₹10,000/- each towards loss of consortium, funeral expenses and loss to estate, the overall compensation comes to ₹14,12,210/-.
17. The compensation awarded shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
18. Respondent Insurance Company is directed to deposit the compensation in the name of the Appellant along with interest within six weeks in UCO Bank, Delhi High Court, New Delhi.
19. 75% of the compensation along with proportionate interest shall be held in fixed deposit for a period of two years, four years, six years, eight years and ten years in equal proportion. Rest 25% along with proportionate interest shall be released to her on deposit.
20. The Appeal is allowed in above terms.
21. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 30, 2012/ vk