

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

Judgment Reserved on: August 04, 2015
% *Judgment Delivered on: August 13, 2015*

+ **MAC.APP No.219/2007**

NEPAL SINGH Appellant

Through : Appellant in person.

versus

UPENDER SINGHRespondent

Through : Mr.K.S.Rana, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant Nepal Singh has impugned the award dated 12.03.2007 passed in Claim Petition bearing S.No.142/2006 whereby he was directed to pay a compensation of ₹57,635/- alongwith interest @ 6% p.a. from the date of institution till its realization to the respondent for the injuries suffered by him in a road side accident caused by two wheeler scooter bearing No.DL-3S-7420 near Vikas Marg Flyover.

2. As per the averment made in the claim petition, on 02.08.1995 at about 11.20 am, the respondent/claimant Upender Singh was hit by two wheeler scooter No.DL-3S-7420. The respondent/claimant was removed to LNJP

Hospital and at the time of preparation of MLC, he mentioned the registration number of the two wheeler scooter as DL-3S-7420 which had hit him and caused injuries. FIR was registered on the basis of statement of Sh.Vinod Kumar who was walking alongwith injured Upender Singh at that time. Statement of injured Upender Singh was recorded by the Investigating Officer on 07.08.1995 when he became fit for statement. The Investigating Officer made efforts to search the registered owner of the offending vehicle and came to know that the offending vehicle was registered in the name of a finance company namely Parivar Finance & Investment India Ltd., 30 Rani Jhansi Road, New Delhi. Details of the lessee of the said vehicle obtained from the finance disclosed Mr.Nepal Singh, H.No.550, Laxmi Bai Nagar, New Delhi-110023 and official address Mr.Nepal Singh (Clerk), DDA, Executive Engg. South Eastern Division No.5, Sarita Vihar, New Delhi-110044 to be the lessee.

3. Thereafter notice under Section 133 MV Act was served on the appellant on 29.09.1995 whereby he was informed that on 02.08.1995 at Vikas Marg near Flyover, one boy Upender Singh was hit by Scooter No.DL-3S-7420 at about 11.20 am. He was directed to report on 05.10.1995 at 3.00 pm to the Investigating Officer SI Karam Chand at PS I.P.Estate alongwith scooter, papers. Thereafter again on 14.12.1995 the appellant was served with the notice under Section 133 M.V.Act and informed to report alongwith two wheeler scooter No.DL-3S-7420 to Investigating Officer SI Karam Chand on 15.12.1995 in connection with accident of the pedestrian with that scooter.

4. The appellant alongwith his wife Mithlesh reported at PS I.P.Estate alongwith scooter and informed that he named his brother to be the person who

had given his scooter number due to enmity, only to create a defence and further admitting that on that day while he was out of his office on some official work, on the way to Vikas Bhawan he happened to hit a pedestrian but ignoring that he left.

5. The respondent/claimant Upender Singh filed a claim petition seeking compensation for the injuries suffered by him. Since the vehicle was uninsured, after considering the evidence adduced by the parties, the appellant was directed to pay compensation of ₹57,635/- alongwith interest @ 6% p.a. from the date of institution till its realization.

6. MAC.App.No.219/2007 preferred by the appellant was dismissed by this Court vide order dated 28.05.2007. The appellant impugned the order dated 28.05.2007 before Hon'ble Supreme Court by filing Civil Appeals No.4217-4218/2008 arising out of SLP(C) Nos.15963-15964 of 2007. Since one of the contentions of the appellant before the Supreme Court was discrepancy in the registration number of the vehicle as mentioned in the seizure memo different from the registration number mentioned in other documents, the Supreme Court observed that there was no material before the High Court to conclude that the Investigating Officer inadvertently mentioned a wrong number. Thus, the matter was remanded to the High Court for fresh consideration on merits.

7. Appellant has argued his case in person. He has submitted that he is having enmity with his elder brother Devender Singh. The respondent is known to his elder brother, who at the behest of his brother, has falsely named him and given his scooter number to the police to falsely implicate him, to harass him by making him to face trial in criminal case as well to pay the compensation.

The appellant has referred to the contents of the seizure memo which pertained to scooter No.DL-3S-2472 which is different from scooter number mentioned in the MLC i.e. DL-3S-7420. The appellant has also submitted that if the respondent was unfit for statement at the time of his admission in the hospital then how he could see and remember the scooter number so as to find mention on his MLC. The appellant has also submitted that in the criminal case he has already been acquitted as the eye witness turned hostile and the Investigating Officer remained unexamined. The appellant has submitted that since it is a case of false implication at the behest of his elder brother Devender Singh and number of complaints were made by him in this regard, the learned Tribunal ignored all these aspects. He has also submitted that the Tribunal also failed to take note of the defence led by the appellant which established that on the date of accident, he was present in his office from morning till evening and his scooter also remained parked in the office parking. Thus, there was no occasion for him to cause any accident in the manner stated by the respondent. The appellant has submitted that the place of accident was at a distance of about 100 yards from P.S. I.P.Estate but no FIR was lodged by the injured or any other persons and that there is a delay of more than five hours in lodging the FIR. It has been further submitted that the documents of address filed by the Investigating Officer in the criminal case disclosed the address of the appellant as House No.550 but during proceedings the same was tampered with and House No.550 was corrected as 580, Laxmi Bai Nagar which is address of his elder brother Devender Singh. There is no explanation given by the Investigating Officer as to who is the owner of Scooter No.DL-3S-2472 which

was seized by him. The Investigating Officer did not appear as a witness before the learned Trial Court which has been commented adversely by the learned MM noting that the Investigating Officer was not examined for the reason best known to the prosecution. Further the judgment by the Supreme Court delivered on August 07, 2008 was suppressed from the Executing Court.

8. On behalf of respondent, Sh.K.S.Rana, Advocate has submitted that it is a case where registration number of the offending vehicle was given by the injured at the first available opportunity to the doctor who examined him and it was so recorded in the MLC itself. Learned counsel for the respondent has submitted that the respondent even does not know the brother of the appellant and had nothing to do with the enmity, if any, between the two nor he is from the same village. It has been urged that the compensation awarded by the Tribunal in view of the nature of the injuries i.e. crush injuries suffered by the respondent is also not on higher side and respondent has been suffering in this litigation just because the vehicle was not insured.

9. I have considered the rival contentions and carefully gone through the record.

10. The thrust of the arguments advanced by the appellant is mainly four fold:

- (i) His brother Devender Singh is behind his false implication in the criminal case and also instrumental in furnishing his scooter number to be the offending vehicle in the accident wherein respondent suffered injuries,
- (ii) The offending vehicle in this case was Scooter No.DL-3S-2472 as recorded on the seizure memo in case FIR No.279/1995, PS I.P.Estate and in

that circumstance how the registered owner of Scooter No.DL-3S-7420 can be held liable to pay the compensation especially when he produced the certificate that on that day he was on duty and his scooter was lying parked in office parking.

(iii) Delay of five hours in registration of FIR.

(iv) If injured was 'unfit for statement' then how he could see and remember the registration number of scooter which hit him.

11. In order to appreciate the above contentions, it is necessary to refer to the record prepared in this case after the respondent suffered injuries and removed to the hospital by the PCR. As per the MLC Ex.PW1/5 of respondent Upender Singh he was brought to LNJP Hospital on 02.08.1995 at 12.05 pm on being hurt in a road side accident by scooter No.DL-4S-4720.

12. Thereafter on getting the information about the accident, the local police has taken steps to trace the registered owner. On being informed that the scooter was registered with the finance company, the name of the lessee was inquired from the finance company. As per the information received from the finance company, Mr.Nepal Singh, resident of H.No.550, Laxmi Bai Nagar, New Delhi-23 was the lessee whose office address was given as Mr.Nepal Singh (Clerk), DDA Executive Engg. South, Eastern Division No.5, Sarita Vihar, New Delhi-44.

13. On getting the above information, a notice under Section 133 MV Act was served on Sh.Nepal Singh on 29.09.1995. Vide this notice, the appellant was informed that on 02.08.1995 at Vikas Marg near Flyover, one boy Upender Singh was hit by Scooter No.DL-3S-7420 at about 11.20 am and the noticee

was directed to report on 05.10.1995 at 3.00 pm to the Investigating Officer SI Karam Chand at PS I.P.Estate alongwith scooter papers. Thereafter again on 14.12.1995 noticee was informed to report alongwith two wheeler scooter No.DL-3S-7420 to Investigating Officer SI Karam Chand on 15.12.1995 in connection with accident of a pedestrian with that scooter.

14. As per the chargesheet, appellant Nepal Singh informed that he named his brother to be the person who had given his scooter number due to enmity, only to create a defence and further admitting that on that day while he was out of his office on some official work, on the way to Vikas Bhawan he happened to hit a pedestrian but ignoring that he left.

15. I am conscious of the fact that such type of admission before the police is not admissible in evidence but the fact remains that after service of notice under Section 133 MV Act two times i.e. on 29.09.1995 and 14.12.1995, the appellant did not inform the police by replying the notices under Section 133 MV Act that on that day during office hours he remained present in his office and his scooter remained parked in the office parking.

16. So far as appellant is concerned, in his testimony before the Tribunal it was the case of simple denial and production of attendance certificate from his employer that he was present in the office on that date. The attendance register at the most could have proved that the appellant was on duty on that day. The testimony of the respondent in this regard about the manner in which he received injury when scooter No.DL-3S-7420 hit him and the fact that driver of the scooter fled from the spot, has been rightly considered by the Tribunal to award compensation to him from the lessee/driver of the said vehicle.

17. This aspect has been dealt with factually and legally in right perspective by the learned Tribunal observing as under:-

‘11.Under such circumstances, where the details of the offending vehicle have been recorded immediately after the accident, the theory of manipulation appears to be without any legs to stand upon. The respondent has stated that he was on duty on the day of accident, but his alibi appears to be weak as there is neither any documentary record nor any testimony that after marking himself present in the office, he could not have left the premises or that he was present in the office at 11.20 am, the time of occurrence of accident. Under such circumstances, merely because he has been acquitted in the criminal case (eye witness having turned hostile) is no ground to obviate the categorical testimony of the petitioner corroborated by supporting documents.’

18. The contention of the appellant that there was a delay of more than five hours in recording the FIR is not going to help him in any manner whatsoever for the obvious reason that the injured has been brought to the hospital by PCR. As per rukka Ex.PW1/3 the Investigating Officer reached the hospital pursuant to DD No.10A. At that time, the injured was in Operation Theatre and thereafter when opinion was obtained from the doctor to record the statement of the injured, he was declared unfit for statement on 02.08.1995 at 4.00 pm. Thereafter the FIR has been recorded on the statement of Vinod Kumar who was accompanying the injured at that time.

19. Another contention raised by the appellant is that as to how a person who was unfit for statement could have given the registration number or make of the scooter that caused the accident. The answer is not difficult to find. A brief look at the contents of the MLC is sufficient to dispel the confusion, if any, and

issue of identity of the vehicle involved in the accident. The MLC Ex.PW1/5 of respondent Upender Singh, which was prepared at LNJP Hospital, records as under:

'Date and hour of arrival : 2.8.95 at 12.05 pm

Brought by : ASI Om Prakash (PCR-09)

Informant : Himself & B/B.

*Alleged H/O : Injury in the right leg and lips due to R.S.A. **He was hit by a scooter DL-3S-7420 Vespa** which crossing the road near ITO Flyover.*

L/E : Patient is conscious.

Oriented

Vital stable

Pulse – 68/min.

Injuries : 1. Crush injuries in the legs

2. # rt. Leg (blow knee)

Adv.

- Inj. T.T. 0.5 ml

*- **Refer to Surg. Emer. for immediate management and treatment.***

20. It is a case where the claimant was hit by scooter No.DL-3S-7420 which was immediately recorded on the MLC even with the detail of the make i.e. Vespa. The appellant has read entire cross examination of PW Upender Singh recorded before the Tribunal and admittedly from his testimony it could not be proved that the claimant Upender Singh had even a remote connection with the brother of the appellant. The claimant in this case was just 18 years old who suffered crush injuries on right leg and remained hospitalized for almost a week and thereafter also remained under treatment. He had absolutely no motive to falsely implicate any innocent person in the matter. It also cannot be ignored

by the Court that even during criminal trial in case FIR No.279/1995 under Sections 279/337, PS I.P.Estate, the claimant Upender Singh on the aspect of identity of the vehicle and its driver pointed out towards the appellant and scooter No.DL-3S-7420.

21. It may be noted here that the Criminal Court has acquitted the appellant Nepal Singh not for the reason that the Investigating Officer failed to appear or that the injured/respondent did not support the case of prosecution. The reason for acquittal given by the learned MM was that PW Vinod, who was conductor of the bus wherein injured Upender Singh was working as Helper, did not fully support the case of the prosecution. But the respondent/injured herein when examined as PW-7 before learned MM, not only deposed about the manner of accident but also mentioned the scooter number as DL-3S-7420 and identified the appellant as driver of the said scooter. Thus, right from the stage when the respondent-injured was removed to LNJP Hospital and his MLC was prepared till his examination before the learned MM, as well as before the learned Tribunal, his statement remained consistent about the registration number of the offending vehicle and identity of the driver of the said vehicle. He categorically denied of making false statement to implicate the appellant or having any acquaintance with the appellant prior to the date of incident.

22. It is not out of place to mention here that acquittal of the appellant in the criminal trial does not affect the case of respondent to seek compensation from him. In a petition to seek compensation under Section 166 M.V.Act, to prove the negligence, the standard of proof required to hold a person liable to pay compensation is not the same as in a criminal trial. In a criminal trial the

standard of proof required to hold a person guilty is that of ‘beyond reasonable doubt’ whereas in a claim petition, it is the ‘preponderance of probabilities’.

23. Now it is time to deal with the contention of the appellant as to what is the effect of mention of scooter No.DL-3S-2472 in seizure memo prepared in FIR No.279/1995, PS I.P.Estate whereas the compensation has been claimed in respect of the scooter No.DL-3S-7420. At the cost of repetition, it can be noted that on the MLC, the offending vehicle was mentioned as DL-3S-7420, registered owner was traced of that scooter only and notice under Section 133 MV Act was served on the appellant who was lessee of the above scooter which was registered in the name of finance company. The request by the Investigating Officer for mechanical inspection and the mechanical inspection report Ex.PW1/6 is also of scooter No.DL-3S-7420. Thus, it is clear that the scooter seized in the case FIR No.279/1995, PS I.P.Estate was scooter No.DL-3S-7420 only.

24. It may be noted here that even before the Apex Court in Civil Appeals No.4217-4218/2008 arising out of SLP(C) Nos.15963-15964 of 2007 the appellant did not dispute that vehicle owned by him bears registration No.DL-3S-7420. Even at the stage of arguing this appeal, the appellant does not dispute the fact that the said scooter bearing registration No.DL-3S-7420 was produced by him before the Investigating Officer and seized. The mechanical inspection report Ex.PW1/6 also pertained to scooter No.DL-3S-7420. When the notices under Section 133 M.V. Act were served on the appellant on two dates i.e on 29.09.1995 and 14.12.1995, the appellant had not taken the plea that on that day his scooter was lying parked in his office and he was present in

his office throughout. The following overwhelming documentary evidence is available to establish that the registration number of the offending vehicle is Scooter No.DL-3S-7420 :-

- (i) MLC Ex.PW1/5 records that number of offending vehicle as scooter No.DL-3S-7420 Vespa which was disclosed by the **patient himself & B/B.**
- (ii) Rukka Ex.PW1/3 which was recorded on the basis of statement of Sh.Vinod Kumar – the eye witness disclosing the registration number of the scooter that hit Upender Singh.
- (iii) Registration Certificate showing the name of registered owner as Parivar Finance Pvt. Ltd.
- (iv) Application to the finance company by the IO to furnish the information about the name and address of the lessee of scooter No.DL-3S-7420.
- (v) The information provided by the finance company about the residential address as well as official address of the lessee i.e. Mr.Nepal Singh, H.No.550, Laxmi Bai Nagar, New Delhi-110023 and official address Mr.Nepal Singh (Clerk), DDA, Executive Engg. South Eastern Division No.5, Sarita Vihar, New Delhi-110044, who is none else but the appellant.
- (vi) Notice under Section 133 MV Act served on the appellant Nepal Singh on two dates i.e. on 29.09.1995 and 14.12.1995.
- (v) Application Ex.PW1/6 by the IO for mechanical inspection of two wheeler scooter No.DL-3S-7420 and the report by mechanical inspector thereon.

25. The only document of which the appellant is trying to take advantage is the seizure memo Ex.PW1/7 which mentions the scooter number as DL-3S-

2472. The seizure memo Ex.PW1/7 is to the effect that one scooter has been produced by Nepal Singh, S/o Sh.Leela Singh, R/o D-69, Sector-22, Noida, U.P. which has been seized vide this memo prepared in FIR No.279/1995, under Section 279/337 IPC, PS I.P.Estate. It is only in this memo in the heading the number of the scooter has been recorded as DL-3S-2472 instead of DL-3S-7420. It is not the case of the appellant that the scooter was produced by some other person by the same name in case FIR No.279/1995, PS I.P.Estate. This may be for the reason that the seizure memo does not record only name but also parentage and address of the person from whom the scooter was seized. It is not disputed by the appellant that particulars so recorded pertain to him.

26. In view of the above documentary evidence, right from the inception when the incident had taken place till the conclusion of the trial, the offending vehicle proved to be involved in the incident is only DL-3S-7420 which was admittedly possessed by the appellant as lessee (registered in the name of finance company). It is also not in dispute that the vehicle was uninsured. Thus, the liability to pay compensation is that of the appellant only.

27. The Tribunal has awarded a total compensation of ₹57,635/- under following heads:-

- ‘Towards pain and sufferings - ₹30,000/-
- Towards special diet - ₹10,000/-
- Towards conveyance - ₹3,000/-
- Towards loss of expectation and amenities in life - ₹10,000/-
- Towards loss of income - ₹4,635/-’

28. It is unfortunate that in respect of the injuries suffered in the year 1995, which was grievous in nature being fracture of right leg with crush injuries, to seek compensation of ₹57635/-, for the respondent the wait continues. I am of the considered opinion that neither the identity of the offending vehicle nor its driver was in doubt. Further for the purpose of a claim petition under Section 166/140 M.V. Act the manner in which the accident has been caused by hitting a pedestrian and thereafter fleeing from the spot established the rash and negligent driving by the appellant so as to make him liable to pay compensation to the respondent-injured for the injuries suffered by him.

29. Finding no infirmity or illegality in the impugned award, the appeal is dismissed with cost.

30. The respondent/claimant has not been able to get compensation for almost two decades. The appellant is directed to deposit the awarded amount with interest @ 6% per annum from the date of institution of the claim petition till its realisation within two months from the date of this order with Registrar General of this Court. On failure of the appellant to deposit the awarded amount within two months from the date of this order, the awarded amount shall carry interest @ 7.5% p.a. from the date of institution of the claim petition till its realization. On receipt of the awarded amount, the Registrar General of this Court shall release the said amount in favour of the respondent/claimant.

(PRATIBHA RANI)
JUDGE

AUGUST 13, 2015/ 'st'