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

Date of Decision: 9th February, 2016

+ **FAO 148/2002 & CM No.349/2002**

GURPAL SINGH

..... Appellant

Through: Mr. S. K. Kalia and Mr. K. K.
Bhalla, Advs.

versus

MEENU & ORS.

..... Respondents

Through: Mr. Rajeev Saxena and Ms. Mehak
Tanwar, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal was filed in March 2002 to assail the judgment dated 11.02.2002 of Motor Accident Claims Tribunal (the Tribunal) on petition under sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) deciding motor accident claim case registered as suit No.208/1999 (old number 259/1998) primarily to question the finding returned that the vehicle described as scooter No.DL 6 SB 3035 make LML (the scooter) admittedly driven by the appellant had caused the motor vehicular accident that occurred on 08.04.1998 at about 10.30 PM, causing injuries to Jagmohan (the deceased) on account of which he died in the hospital on 28.04.1998. The appeal has taken almost 14 years to come to the stage where it can be decided. As may be seen from the proceedings recorded on the file of the appeal over the years, delay in disposal is

mainly on account of evasion on the part of the appellant and the lack of assistance on the part of the respondent Nos.1 to 7 (collectively “the claimants”).

2. The fact that Jagmohan had suffered injuries in a motor vehicular accident on 08.04.1998 at about 10.30 PM on roadside opposite Shadipur Depot is admitted on both sides. The appellant had also led evidence by examining himself as RW1, besides relying on the testimonies of two witnesses Gurjeet Singh (RW2) and Balvinder Singh (RW3), first one described as the person working in the vicinity and the latter as a person who was accompanying the appellant as a pillion rider on the scooter at the relevant date and time of occurrence. The presence of the appellant as the driver and owner of the scooter at the scene of accident is admitted not only by his own deposition (RW1) but also conceded when during investigation into the corresponding first information report (FIR) No.256/1998 registered in police station Patel Nagar he was served with a notice under section 133 of MV Act on 17.06.1998 in reply thereto he admitted the ownership of the scooter and also the fact that he was the driver thereof on the date of accident.

3. The fact that Jagmohan, having been injured in the aforementioned accident on the night of 08.04.1998, was brought to Dr. Ram Manohar Lohia Hospital, New Delhi (the hospital) and remained under treatment there till he died on 28.04.1998, was substantiated during inquiry before the Tribunal by abundant and unimpeachable evidence in the form of medico legal report and the clinical notes of the hospital indicating the treatment administered which included four surgical procedures, one after the other. The clinical notes and the death

summary, the documents which are part of the said material, clearly bring out that the condition of Jagmohan had deteriorated over the period and he eventually succumbed to injuries on 28.04.1998 at about 11 AM, as an indoor patient.

4. The claim petition was filed by first to seventh respondents before the Tribunal on 10.07.1998. The appellant was impleaded as first respondent, described as the driver of the scooter, on account of rash/negligent driving on whose part the accident had occurred. Raj Kumar (the eighth respondent herein) was impleaded as the second respondent in the claim petition before the Tribunal because the scooter was registered in his name. Though, it has come on record that the eighth respondent had sold the scooter to the appellant herein before the accident, the Tribunal held the said eighth respondent also to be jointly and severally liable on account of the vehicle having continued to be registered in his name. Noticeably, the eighth respondent did not challenge the impugned judgment and award nor has taken care to participate in the proceedings on the appeal at hand.

5. The case of the claimants before the Tribunal was that the deceased was waiting for a bus on pavement on the road from Pusa Road to Shadipur Flyover near Shadipur Depot on 08.04.1998 at about 10.30 PM, when he was hit by the scooter driven by the appellant herein, it having come in a rash/negligent manner from his backside. It was stated that as a result of the impact, the deceased fell down on the bumper of a stationary bus located at the place and suffered injuries in the stomach, a part of the body of the bus having entered the abdominal region causing severe damage to the intestines. The claimants also stated that the

deceased had also suffered other injuries including in the head, chest, legs and limbs.

6. When served with the notice the appellant herein filed a written statement denying any involvement of the scooter driven by him in the occurrence. Though conceding his presence at the scene of occurrence, he stated that he was returning from Gurudwara Bangla Saheb to his residence on the scooter and was accompanied by Balvinder Singh (RW3) as the pillion rider. He stated that the deceased had alighted from the rear door of a speeding blue line bus and having lost his balance had fallen down and in the process collided against the bumper of a stationary DTC bus so as to get injured. He claimed in the written statement that he had stopped his scooter and got down to help the deceased, *inter alia*, by fetching a glass of water from a nearby *dhaba* (restaurant). He claimed further that the deceased was “drunk though fully conscious” and when he had inquired of him if he desired to be dropped at a hospital, the deceased had told him that he was feeling alright and would manage to go to his residence. The appellant, thus, claimed that after offering his help he had left the spot but later on learnt about his involvement only in June, 1998 *i.e.* after 2 months when the police called him to the police station.

7. During the inquiry, the claimant led evidence relying mainly on the evidence of Satbir Singh (PW5) to prove the involvement of the scooter and negligence on the part of the appellant in causing the accident. In addition, Constable Kiranbir (PW-1) was examined to prove the copy of the FIR and Madan Lal (PW2), record clerk in Civil Hospital was examined to prove the copy of the post mortem examination report, which was one of the procedures undertaken in the wake of death during

investigation of the police case. Nand Lal (PW3), a record clerk from Dr. Ram Manohar Lohia Hospital was examined to prove the record of treatment.

8. Satbir Singh (PW5) described himself as a driver of an auto rickshaw. According to his version, he was waiting at Shadipur Bus Depot with his vehicle for passengers. He described the whole sequence of events at the night of 08.04.1998 on the same lines as were set out in the claim petition.

9. As mentioned above, the appellant had examined himself as RW1 and also relied on the testimonies of Gurjeet Singh (RW2) and Balvinder Singh (RW3). By and large, the version of the witnesses examined in defence by the appellant is along the lines of the defence taken in the written statement.

10. In addition to the evidence of PW5, the claimants also relied on the record of investigation as reflected in the copy of the report under Section 173 of Code of Criminal Procedure, 1973 ("Cr.P.C.") submitted on conclusion of investigation of the FIR.

11. The Tribunal considered the evidence led by both sides and rejected the contentions of the appellant in the following manner :

"8. As against petitioners case that Jagmohan (now deceased) was hit by scooter no.DL-6SB-3035 testified by eye witness Satbir Singh PW5, respondents tried to make out a case in vain that scooter being driven by Gurpal Singh though reached the spot at the time Jagmohan hit against the stationary bus without there being any hit by this scooter being driven by R-1 Gurpal Singh. Respondents'' evidence as to how Jagmohan suffered injuries is throughout

inconsistent and improbable while testimony of Satbir Singh PW5 most natural and consistent. Needless to emphasise that presence at the spot at the time of accident of scooter DL-6SB-3035 and R-1 Gurpal Singh being its driver are even admitted by R-1 Gurpal Singh. Satbir Singh PW5 categorically stated that he as TSR driver was waiting for passengers at Shadipur bus depot, that the accident took place at about 10 or 10.15 PM, that one sikh gentleman while driving scooter DL-6SB-3035 carrying a pillion rider reached there at a very fast speed and hit against the deceased who due to impact struck against rear bumper of the bus. Only point of controversy in what Satbir Singh deposed and what was tried to be pretended by Gurpal Singh RW1 and RW2 Gurjeet Singh besides pillion rider Baljinder Singh RW3 is whether scooter being driven by Gurpal Singh hit against Jagmohan or Jagmohan hit against the bumper of a stationary bus while getting down from a moving bus. Gurpal Singh R1 stated that when he at about 10.30 pm reached near Shadipur Depot, he saw that deceased got down from a moving bus and struck against the rear bumper thereof. Similarly, Gurjeet Singh RW2 and Balvinder Singh RW3 tried to support him. However, there are glaring discrepancies in the testimony of these witnesses which make them unreliable. In the written statement R1 Gurpal Singh pleaded that on seeing the collision of that person with the stationary bus, he stopped his vehicle, made that man to get up and took him to road side. His plea in the written statement and statement as RW1 in court was contradicted by Gurjeet Singh RW2 who to the contrary stated that it was he (Gurjeet Singh RW2) who removed the injured to the roadside with the help of one person present outside his shop. Contradicting the statement of Gurpal Singh RW1, Gurjeet Sigh RW2 stated that Gurpal Singh thereafter sometime reached the scene of occurrence. The Balvinder Singh RW3 pillion rider contrary to the statement of Gurjeet Singh RW2 stated that one Sardarji who runs Telco Workshop reached only after they had removed the injured who fell down on the road and made him to sit on the ground. Gurpal Singh R1 in his written statement pleaded that he fetched a glass of water for the injured from nearby

Dhaba but Balvinder Singh RW3, pillion rider to the contrary stated that Sardarji who runs Telco Workshop served water to that man. Both according to Gurpal Singh RW1 and Balvinder Singh RW3 injured refused their offer of removal to some hospital. A man may speak lie but circumstances never. A perusal of the case sheet Ex.PW3/A and that of MLC forming part thereof shows that bruises marks were present on the back of chest and lower front side of chest of Jagmohan besides tenderness of chest and abdomen. But surprisingly Balvinder Singh RW3 in reply to the court question stated that neither clothes of that man got torn nor he complained of pain on any part of his body. He on the point deposited as under :-

'I did not notice myself any injury on the person of that man. Clothes of that man did not get torn. He did not complain of pain on any part of his body.'

It can hardly be believed that a person suffering the above injuries would neither complaint of pain nor his clothes could get torn and even Balvinder Singh RW3 would not notice any injury on the person who had struck against the stationary bus which injuries ultimately proved fatal. In case Gurpal Singh RW1 scooter driver would have witnessed the accident taking place in the manner claimed by him, there could have been no occasion for him to ask Gurjeet Singh RW2, a stranger about the manner in which the accident had taken place. However, Gurjeet Singh RW2 on the point in reply to the court question stated as under :

'I had a talk with Gurpal Singh when he asked to me about the manner in which the accident had taken place.'

Mystery remains how R1 Gurpal Singh has managed to produce Gurjeet Singh RW2 in court who was a stranger to him. Even Gurjeet Singh RW2 on the point could not furnish any satisfactory explanation because he stated that he did not tell his address to Gurpal Singh, that he did not know the address of Gurpal Singh and he gave a strange explanation that he (Gurpal Singh) might have received summons and then he approached him. Simply R2 Gurjeet Singh stated

that he had a talk with Gurpal Singh that he was working in the workshop. It is not difficult for a person to procure some witness like Gurjeet Singh of his own choice. Since presence of Satbir Singh being the TSR driver waiting for a passenger at the spot cannot be doubted, statements of RW1 Gurpal Singh, RW2 Gurjeet Singh and RW3 Balvinder Singh have to be discarded for the simple reason that Gurpal Singh R-1 and the witness should have been interested in getting rid of this case against Gurpal Singh, who being admittedly the owner of two wheeler scooter DL-6SB-3035 was to be held personally responsible to indemnify the claim of the petitioners on account of his being driving the scooter on the road without having an insurance cover which tantamounts to commission of offence on his part. Post-mortem report of Jagmohan has been proved on record as Ex.PW2/A by PW2 Madan Lal, record clerk, Civil Hospital while FIR registered u/s 279/337 IPC has been proved as Ex.PW1/A by constable Kiranbir. On the basis of evidence on record discussed in brief above, i hold that it was scooter no.DL-6SB-3035 being driven by R1 Gurpal Singh in a rash and negligent manner which hit against Jagmohan who as a result suffered fatal injuries. Issues No.1 and 2 are decided accordingly in favour of the petitioners and against the respondents.”

12. The learned counsel for the appellant argued that the evidence of PW5 cannot be believed in that the report under Section 173 Cr.P.C., a copy of which was submitted by the claimants, showed that the eye witness of the accident was one Kamal Kumar son of Shyam Lal rather than Satbir Singh (PW5). It was submitted that Kamal Kumar examined during the course of criminal trial, on the basis of afore-mentioned report under section 173 Cr.P.C., did not support the prosecution case and consequently the appellant was acquitted of the criminal charge by judgment of the Court of Metropolitan Magistrate rendered on 13.10.2004, certified copy of which was submitted on record of the appeal. It was argued that the presence of Satbir Singh (PW5) at the

scene of accident as an eye witness was never projected in the criminal case and there is no explanation why Kamal Kumar, the eye-witness cited in the report under Section 173 Cr.P.C., could not have been examined by the claimants in the case at hand. It was also argued that given the finding returned by the criminal court, a conflicting view cannot be taken in the claim petition.

13. Having considered the above arguments, this Court finds no substance in the submissions. The fact that Kamal Kumar was the eye - witness located by the police investigating the corresponding criminal case does not mean he would be the solitary eye witness to the incident. The accident had occurred on a public road at a public place where concededly large number of persons were present and would have seen the accident in the course of happening. Merely because Kamal Kumar was the only witness on whose word the police rested its case does not mean there could not be any other eye witness to the accident. The fact that the name of Satbir Singh (PW5) is not noted as an eye witness in the report under Section 173 Cr.P.C. does not mean he cannot be trusted. If at all, it would be a default on the part of the investigating police to be in touch with him inasmuch as his testimony clearly shows and explains his presence at the crucial point of time.

14. The result of the criminal case is inconsequential. It is basic that the standard of proof in the proceedings arising out of the liability in tort is to be decided on touchstone of preponderance of probabilities rather than proof of guilt beyond all reasonable doubts.

15. The argument that the claim petition indicated that the deceased was standing on the pavement does not make any headway. Undoubtedly, the description in the claim petition is loosely worded. Noticeably, immediately after mentioning the pavement it also adds the word “on road”. The site plan drawn by the investigating police, a copy of which has been filed as a part of the charge sheet, shows that there was a stationary bus at the bus stop in question and that the deceased was waiting for the bus on the route he intended to take just behind the said stationary vehicle on the road.

16. Nothing is to be read into the presence of the deceased “on the road”. It is common knowledge that in a busy city like Delhi where public transport is hard to catch, public persons dependent on the services of such public transportation remain present at the bus stations and even come out on the road, most of the time out of eagerness not to miss the bus when it comes. The fact that it was a stationary bus and the deceased was standing behind it rather shows that the deceased had not exposed himself unduly to the traffic moving on the road. He had the cover of a stationary vehicle in the safety of which position he was waiting for the bus.

17. The reasons why the learned Tribunal did not find the evidence of the appellant and his two witnesses worthy of reliance have been quoted in extenso above. This Court finds the said reasoning to be proper and well founded. It is really strange that a person whose stomach had been badly injured so as to damage even the intestines was described by the witnesses in defence to be a person who was “alright” and giving no signs

of visible injuries. This itself exposed the hollowness and falsity of the defence taken.

18. Reference was made in the written statement, and in the evidence, to the claim that the deceased was “drunk”. If by the expression “drunk”, the appellant intended to convey that the deceased had consumed alcohol so as to be inebriated and not to be in a position to take care of himself on the public road, it should have been spelt out clearly. Assuming this to be the defence taken, the appellant was required to prove the same by positive evidence. A vague description by one witness alone cannot suffice. The MLC, a copy of which is part of the report under Section 173 Cr.P.C. on record, is sufficient to discard this theory. If the deceased was actually inebriated, this state of his condition was bound to come to the notice of the medical officer who had examined him on his arrival at the hospital. Merely because first respondent in her statement as PW4 is stated to have conceded that the deceased would take liquor occasionally, it does not mean that he would always be inebriated condition round the clock.

19. The learned counsel for the appellant then referred to the record of treatment undergone by the deceased of the hospital, particularly the death summary, to argue that the death had occurred not because of the injuries suffered in the accident but due to other complications. Having gone through the said material on record, this Court finds no merit in the contention urged. The record of treatment undergone clearly shows that the intestines having been damaged, the deceased was required to be subjected to surgical procedure even where after his condition continued to be deteriorating and, thus, further surgical procedures were performed.

But the medical help was of no avail as he died on 28.04.1998. Clearly, there was a connection between the injuries suffered by the deceased and his death and, thus, it cannot be argued that the death had occurred for reasons not connected with the injuries suffered in the accident.

20. No other point was pressed or urged. The appeal is devoid of substance and is dismissed.

R.K. GAUBA
(JUDGE)

FEBRUARY 09, 2016
VLD