

\$~ R-38

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

Date of Decision: 14th March, 2016

+ MAC.APP. 406/2007

ANSHU GUPTA

..... Appellant

Through: None.

versus

SANJAY PANCHAL AND ANR

..... Respondents

Through: Mr. Pradeep Gaur & Amit Gaur,
Advts. for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant had suffered injuries in a motor vehicular accident that occurred on 19.11.2001 involving collision between two wheeler scooter bearing registration no.DL-1SJ-9920 (hereinafter referred to as the claimant's scooter) and the scooter bearing registration no.DL-7SP-1407 (hereinafter referred to as the offending vehicle). He filed a claim petition through his wife (next friend) on 13.05.2002 before the motor accident claims tribunal (the tribunal) seeking compensation for the injuries and disability consequently suffered, impleading the owner/driver of the offending vehicle and its insurer as first and second respondents. On the basis of inquiry held, the tribunal, by judgment dated 22.03.2007, calculated the compensation payable to be ₹34,96,971/-.

2. The claim petition had been contested, *inter-alia*, on the ground that the claimant himself had been negligent in driving his scooter. This contention was examined by the tribunal, it concluded that the claimant had been guilty of contributory negligence to the extent of fifty percent (50%) and, thus, reduced the compensation awardable to him to the extent of 50%, directing the insurance company to pay with interest.

3. Though the appeal was preferred raising several issues concerning the calculation of the compensation, at the hearing it is pressed only on the ground that the finding of the tribunal that the claimant was also guilty of contributory negligence to the extent of 50% was not correct.

4. Having heard the learned counsel on both sides and having gone through the tribunal record, this court does not find any substance in the contention urged.

5. The claimant had been rendered disabled to the extent of 70%. He did not examine himself in evidence. However, on his behalf Nitin Gupta (PW3) an eye witness was examined. PW3 was following the scooter of the claimant in his car in the same direction. He deposed that when the vehicle had reached Madhuban Chowk, the offending vehicle had come from the left side at a high speed with the pillion rider and hit the scooter of the claimant forcing him to take “3-4 rounds” after falling on the ground. The rider of the offending vehicle, the first respondent herein, also examined himself as R1W1. According to his evidence, the scooter of the claimant had come from behind and hit his scooter rendering him fall down and suffering injuries, having become unconscious.

6. The claimant also relied on the record of the investigation conducted by the police during the probe into the first information report (FIR) no.594/2001 which have been registered in police station Preet Vihar, Delhi. The said record includes copy of the site plan (page 257 of the tribunal record), depicting the layout of the public roads and the junction where the collision took place.

7. The tribunal concluded that the claimant was guilty of contributory negligence observing as under:-

“At the same time, one cannot ignore the statement of RIW1 who gives his version of the accident who is also injured. The petitioner injured himself is not examined. We are left with the statements of PW3 and RIW1. According to RIW1 one scooter came from behind and hit his scooter. According to PW3 scooter no.1407 (respondent no.1’s scooter) came from left hand side. None of these witnesses had stated the directions and the course of these vehicles as per the site plan prepared by the police. Ex.PW4/D is the site plan. The site plan also does not depict the course of the two vehicles involved in the accident. If the statement of PW3 is to be understood as the course of the scooter of the injured Anshu Gupta, as proceeding from east to west, the vehicle of the respondent no.1 must be traversing from west to east in the opposite direction. If this be correct, the respondent no.1 who was supposed to move in the other lane i.e. towards the south in the site plan had switched over to the track meant for traffic flowing from the opposite direction. RIW1 stated that the scooter hit him from behind. In the cross-examination of RIW1, nothing is elicited to demolish his say by the petitioner that the vehicle of injured hit him from behind. On the other hand, RIW1 had denied that he hit the vehicle of the petitioner while coming from the opposite direction. In the result, I am only to choose between the evidence of PW3 who stated that respondent no.1 was coming from opposite direction and that of

RIW1 who deposed that he was hit from behind which means he was also in the flow from east to west as per the site plan. Though it was attributed by PW3 that respondent no.1 was negligent, it cannot be denied that both the scooterists were rash and negligent either. Therefore, I hold issue no.1 partially in favour of the petitioner holding in the circumstances the blameworthiness of the petitioner Anshu equally to the accident considering that the vehicles involved are of similar capacity.”

8. Upon the evidence adduced being examined in the light of the site plan referred to above, the view taken by the tribunal is found to be correct and proper. The scooter of the claimant, after the collision, was found on the carriage way of the road which was meant for movement of traffic from west to east. Having regard to the case set up by him he was on way from east to west and, thus, would have come in the path of the offending vehicle.

9. In this view, the appeal is found devoid of substance and is accordingly dismissed.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016
SSC