

\$~5

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

**Date of Decision: 19<sup>th</sup> April, 2016**

+ **MAC.APP. 740/2014**

**RAKESH KANT JUNEJA**

..... Appellant

Through: Mr. R. K. Kohli, Ms. Mamata Pal &  
Mr. S. B. Singh, Advs.

versus

**MAHENDER CHAUDHARY & ORS.**

..... Respondents

Through: Mr. Sunil Kumar, Adv.

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. On 29.09.2008, a motor vehicular accident took place at about 11:30 PM involving two motor vehicles, one being a three wheeler scooter bearing registration no.DL-1RE-6546 (TSR) and the other a Maruti Zen car bearing registration no.DL-9CD-0225 (the car) at a point of time, when both vehicles were moving in the same direction over Tilak Nagar flyover. Three persons were travelling as passengers in TSR, they concededly including Sachin (PW2), Sushil Kumar (PW3) and Shashi Kant Kiran, (he having

consequently died). The car admittedly was driven by the appellant, he also being its owner. It is his claim, and his word is supported by that of Mukesh Kathuria (RW2), a relative, that the latter (RW2) was also travelling as a passenger in the car at the relevant point of time.

2. The dependant family members of Shashi Kant Kiran (the deceased) brought an accident claim case (no.635/2014) before the motor accident claims tribunal (the tribunal) on 21.08.2009 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (the MV Act), impleading the appellant as the sole respondent, he being the driver and owner of the car, it admittedly not being covered by any insurance policy against third party risk for the period in question. In the claim case, the dependant family members of the deceased, hereinafter referred to as the claimants (first to third respondents) alleged that the accident had occurred due to rash driving of the car by the appellant since it had come at fast speed and had hit the TSR from behind turning it turtle and resulting in injuries suffered by the said three persons, one of whom died in the consequence.

3. It may be mentioned here that the local police had also registered a first information report (FIR) no.367/2008 which was taken up for investigation for offences punishable under Sections 279/337/338 & 304-A of Indian Penal Code, 1860 (IPC). The police submitted a detailed accident report (DAR), Ex.PW1/F, before the tribunal on the basis of evidence gathered during the investigation into the said FIR.

4. On being served with the notice, the appellant submitted written statement seeking to contest the claim case, *inter-alia*, on the ground that the accident had occurred due to negligence on the part of the TSR driver since

it was he who had suddenly changed lane coming in the way of the fast extreme right lane and thus in the path of the car which was moving there resulting in the collision.

5. The tribunal held inquiry during which the claimants examined, *inter-alia*, PW2 and PW3, the two other passengers in the TSR who had also suffered injuries and were eye witness to the sequence of events. The appellant, on the other hand, examined himself (RW1) and also relied on the evidence of Mukesh Kathuria (RW2), the sum and substance of their evidence being along the lines of defence taken in the case noted above.

6. The tribunal considered the evidence on record and returned a finding that the accident had occurred due to negligent driving of the car by the appellant. It proceeded to award compensation in favour of the claimants, in the sum of ₹15,77,381/- with interest.

7. By the appeal at hand, the appellant seeks to assail the view taken by the tribunal in the judgment dated 17.05.2014 holding him at fault and responsible for the accident, his prime grievance being that the evidence on record has not been properly considered or appreciated.

8. Having heard arguments on both sides and having gone through the tribunal's record, this court agrees with the appellant to the extent that the tribunal has actually not discussed the evidence in entirety before reaching a finding adverse to the defence taken by him (appellant) in the claim case. The tribunal has generally discussed the evidence of PW2 and PW3 and thereafter proceeded to refer vaguely to the documents filed by the claimants

to conclude that the accident had indeed occurred due to rash/ negligent driving of the car by the appellant.

9. The appellant has relied on *Mahadeo Hari Lokre vs. The State of Maharashtra*, (1972) 4 SCC 758 and *Ravi Kapur vs. State of Rajasthan*, (2012) 9 SCC 284 to argue that rash or negligent driving on his part has not been brought home. He also relies on *Mehnga Singh vs. State & Anr.*, (2012) CrI. L. J. 3940, a judgment rendered by a learned single judge of this court in a criminal case arising out of a charge for offences under Sections 279/337/304-A IPC, the submissions being that fault cannot be traced at his door only because he was driving the car which has been roped in by the police in the corresponding criminal case.

10. Whilst it is true that the conclusion reached by the police investigating the corresponding FIR concerning the motor vehicular accident cannot be taken as the entire truth or clinching material, it also cannot be denied that the evidence gathered by the police during such investigation is always taken as handy for appreciating the circumstances in which the accident had occurred. Unlike the criminal case where the guilt of the person accused of causing accident (and damage) due to rash or negligent driving of a motor vehicle is to be proved beyond all reasonable doubts, in an inquiry into a claim petition, based on liability in tort, the standard of proof is preponderance of probabilities.

11. Undoubtedly, the tribunal has short-shifted the issue and has not considered the evidence in entirety but given the fact that this court is the first appellate court and, therefore, the final forum on facts, the evidence on record can always be re-appreciated by this court to reach proper findings.

With able assistance of the learned counsels on both sides, the court has gone through the evidence on record and finds that there is no escaping the conclusion that the accident had occurred due to negligent driving of the car by the appellant.

12. The two witnesses examined by claimants, PW2 and PW3, were passengers in the car with the deceased and have affirmed on oath the sequence of events leading to the collision. Their respective affidavits (Ex.PW2/A & Ex.PW3/A) show that while the TSR was moving across the flyover, the car had suddenly come from behind at a very high speed, its driver changing lanes and hitting the TSR from its rear side causing the collision. Both the witnesses were cross-examined at length. The effort during cross-examination essentially was to demonstrate that they being passengers in the rear portion of the TSR were not in a position to look behind or to be able to gauge the speed or manner in which the car was approaching the scene. PW2 met the said challenge squarely as he explained that since the car was blowing horn, he had looked behind and seen it coming. Similar is the answer given by the PW3 to identical query during his cross-examination. What is pertinent to note is that the defence did not refute or challenge the evidence of PW2 and PW3 with regard to their statements that the car was also changing lanes when approaching the TSR from behind before the collision took place.

13. As mentioned above, the appellant had also examined himself (as RW1) and relied on the word of his relative Mukesh Kathuria (RW2). Though their versions in their respective affidavits (Ex.RW1/A & Ex.RW2/A) are almost identical, the former (that of the appellant) is more

elaborate. In the said versions, the appellant and the witness relied upon by him speak about the TSR having changed the lane from left to the extreme right (the fast lane), the appellant having himself stated in his affidavit that the speed of the vehicle driven by him at the relevant point of time 50 kmph. The defence taken by the appellant, however, stood punctured beyond repair when his witness RW2 conceded during his cross-examination that the TSR was ahead of his vehicle in which he was travelling when it was hit from behind. Noticeably, he would not say that TSR was ahead because it had suddenly changed lane at that stage.

14. The copy of the report under Section 173 Cr.P.C. (Ex.PW1/F collectively) includes the site plan (page 331 of tribunal record) and copies of the mechanical inspection reports of the two vehicles (pages 343-347 of the tribunal's record). The extent of damages suffered by the two vehicles noted in said documents tell their own story. There is no doubt that the TSR was hit by the fast moving car from behind. The site plan shows that the car was found stationary, after the accident close to the central divider, the evidence showing clearly that the car had hit the divider also after the collision.

15. In the given sequence of events, the burden of explaining as to why the appellant was not in a position to avoid collision against a motor vehicle moving in front was on the appellant. He has clearly and miserably failed to discharge his burden. In these facts and circumstances, the finding returned by the tribunal as to the negligence on the part of appellant does not call for interference.

16. The appeal is, therefore, unmerited and is dismissed.

17. The statutory amount, if deposited, shall be refunded.

**R.K. GAUBA  
(JUDGE)**

**APRIL 19, 2016/ssc**

