

\$~20

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

%

Judgment delivered on: 10.12.2021

+

MAC.APP. 218/2021 & CM. APPL.23083/2021

NATIONAL INSURANCE COMPANY LTD Appellant

versus

SMT. MUNJARIN

.....Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Manoj Ranjan Sinha, Advocate (Through VC)

For the Respondent: Mr. Manish Maini, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns award dated 08.03.2021, whereby Detailed Accident Report (DAR) has been disposed of and compensation awarded.

2. The brief facts leading to the case are that telephonic information was received from a mobile number 9811327366 in respect of a road accident. A DD entry was recorded on 05.07.2014 at Police Post Inderlok.

3. Based on the information received, the Investigating Officer

MAC. APP. 218/2021

Signature Not Verified

Digitally Signed By: KUNAL
MAGGU
Signing Date: 12.12.2021 09:31:46
This file is digitally signed by PS
to HMJ Sanjeev Sachdeva.

Digitally Signed
By: JUSTICE SANJEEV
SACHDEVA
Signing Date: 11.12.2021
17:51

1

reached at the spot of the accident and discovered that the injured had already been shifted to the hospital by an unknown person.

4. Investigating Officer made a call at the above-referred mobile number and he was informed by the person (owner of the offending vehicle, Vikram Pratap Singh, who is respondent No.9 in this appeal), who answered the call that he was driving his car bearing registration number HR-26CA-5761 from Shastri Nagar to Inderlok-crossing, when he heard the sound of an accident and then noticed that a person was lying down on the road and also a scooter lying nearby. He informed the police, stopped his car and shifted the scooter to the side of the road and then removed the injured to Sunder Lal Jain hospital for treatment in a TSR. The owner of the vehicle informed the police that he had not seen the accident, but only heard the sound of accident.

5. Based on the information provided by the owner of the car, an FIR was registered against unknown person. Subsequently, the injured succumbed to the injuries sustained.

6. A Detail Accident Report was filed contending that when the deceased was driving his scooter, a car bearing registration number HR-26CA-5761 dashed against the scooter from behind. The scooter of the deceased struck against the road divider.

7. The driver of the offending vehicle stopped his vehicle nearby

and came to the spot of accident. A crowd had gathered at the spot they detained the driver of the offending vehicle. The driver of the offending vehicle shifted the deceased to the hospital in a TSR.

8. As per the Detailed Accident Report, respondent No.8, Raju Prasad was the driver of the vehicle, which was owned by respondent No.9, Vikram Pratap Singh. Petition was also filed by the claimants under Section 166 of the Motor Vehicles Act seeking compensation.

9. In the joint reply by owner and driver and the reply of the insurance company, the accident was disputed and it was contended that the vehicle insured with the appellant insurance company has been wrongly roped in and no accident had been caused by the said vehicle or by the driver of the said vehicle.

10. In support of the case of the claimants, PW-2, Mohd. Sagir was produced as an eye-witness, who deposed that he was working as a TSR driver and on the date of the accident i.e., 05.07.2014, he was engaged by one person to travel from Chawri Bazar to Ram Dharam Kanta, Inderlok and then back to Chawri Bazar.

11. He deposed that when he reached Ram Dharam Kanta, Inderlok at about 7.45 AM. and was asked by the person who had hired his TSR to wait, he saw the offending vehicle being driven at a very high speed and in a rash and negligent manner dashed against the scooty going in front of the offending vehicle. He deposed that as a result of

collusion, the scooter driver fell on the road and sustained injuries.

12. He deposed that he left for Chawri Bazar after 5-6 minutes of the accident. He deposed that after 3-4 days of the accident, he happened to visit Inderlok mosque, when he came across the funeral possession and out of curiosity when he enquired, he came to know that the funeral possession was of the same person, who had sustained injuries in the road accident that was witnessed by him. He narrated the facts to the family members of the deceased, who then took him to the local police station for recording his statement.

13. The Tribunal has noticed that the witness was cross-examined at length on behalf of the insurance company. However, the owner and driver of the offending vehicle did not cross-examine the eye-witness.

14. The Tribunal relying on the judgments of Supreme Court in *Bimla Devi & Ors. Vs. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530 and *Parmeshwari Vs. Amir Chand and Ors.*, 2011 (11) SCR 1096 has held that the proceedings conducted by a Motor Accident Tribunal is similar to that followed by a civil court, where facts have to be established by preponderance of probabilities only and not by strict rules of evidence or to be proved beyond reasonable doubts. The Tribunal has further held that in a claim petition under the Motor Vehicles Act, the burden on the claimant is far lesser than that even that in a civil case.

15. Tribunal has thereafter referred to the testimony of PW-2, the eye-witness of the accident and also noticed that the objection raised by the insurance company was that the alleged eye-witness was a planted witness.

16. Tribunal has noticed that the said eye-witness, PW-2 was also cited as a witness by the police in his charge-sheet filed against the driver of the vehicle, respondent No.8 herein. In that view of the matter, Tribunal was of the view that his testimony could not be summarily rejected merely because he was examined belatedly after registration of the FIR.

17. The Tribunal has further noticed that the driver and owner of the vehicle have never come forward to dispute the testimony of the eye-witness, PW-2. Further, the Tribunal has referred to the judgment of the Supreme Court in *Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr.*, Civil Appeal No.1665 of 2019, decided on 14.02.2019, wherein the Supreme Court accepted the testimony of a person, who had appeared before the Tribunal even though he was not cited as an eye-witness in the criminal proceedings.

18. In the instant case, as noticed by the Tribunal, PW-2, the eye-witness is also cited as an eye-witness in the charge-sheet.

19. Tribunal has noticed that the eye-witness has categorically stated that the offending vehicle dashed against the scooter moving in

front of it and the offending vehicle was being driven at a very high speed in a rash and negligent manner. The Tribunal has noticed that that despite a lengthy cross-examination, the testimony of PW-2 could not be shaken.

20. Another important factor that may noticed is that in the statement given to the police on 05.07.2014, respondent No.9, Vikram Pratap Singh, owner of the vehicle has stated that while he was going in his car in front of Metro Pillar No.192, then from behind there was a great sound of accident happening and also vehicle falling on the road. He stopped his car on the side of the road and saw that one person, aged about 50 years was lying on the road and besides him a scooty was also lying there. He along with other persons reached near the said person and after stopping the TSR went along with him to a hospital.

21. Interestingly, in the reply filed to the Detailed Accident Report, the stand taken by him is that respondent No.1 (i.e., Raju Prasad, respondent No.8) herein helped the injured/deceased. It is stated that when he reached the spot the injured was lying on the road after sustaining injuries and he saw the injured and took him to the hospital.

22. A combined reply has been filed by Raju Prasad and Vikram Pratap Singh, the driver and owner of the vehicle. Learned counsel for the appellant insurance company submits that respondent No.1 mentioned in the reply seems to be a typographical error because

respondent No.1 was the driver, Raju Prasad, who was the driver of Vikram Pratap Singh and in no statement has it come that he was driving the vehicle at the relevant time and admittedly the car was being driven by Vikram Pratap Singh and not by Raju Prasad.

23. It is further pointed out that in the statement given before the Tribunal, it is admitted by Vikram Pratap Singh, that he was the one who was driving the vehicle and even denied the suggestion that Raju Prasad by driving the vehicle.

24. Be that as it may, the affidavit of evidence filed by Vikram Pratap Singh with regard to the accident states that on the date of the alleged accident, when the deponent reached at the alleged place of incident, the injured/deceased was lying on the road in the injured condition and no one was coming forward to help the injured.

25. A comparison of the statement given before the Tribunal as well as the statement given to the police shows clear contradiction. In the statement given to the police, which is the statement given on the very day of the accident, Vikram Pratap Singh had stated that he had heard the sound of an accident and a vehicle falling from behind and he stopped his vehicle and turned back and saw the deceased lying on the road and a scooty lying nearby, whereas in the affidavit of evidence filed before the Tribunal, the statement is that the deceased was already lying on the road in an injured condition, when he

reached the spot and nobody was helping him and it is for this reason that he took the deceased to the hospital.

26. Another interesting factor to be noticed is that, though there is a contradiction in the version of Vikram Pratap Singh as to how the accident took place, he consistently states that the car was being driven by him i.e. Vikram Pratap Singh. However, in the FIR, the charge-sheet has been filed by the police against Raju Prasad.

27. In view of the clear contradiction of Vikram Pratap Singh, the version of Vikram Pratap Singh is not believable.

28. Another important factor is that Vikram Pratap Singh could certainly be termed as an eye-witness, who was at the spot on the first instant moment. He was the best person to have cross-examined the eye-witness produced by the claimants i.e. PW-2, Mohd. Sagir.

29. The fact that he chooses not to cross-examine the eye witness produced by the claimants, even though he has himself appeared as a witness in the proceedings, is a factor which has to be certainly held against the owner of the offending vehicle and adverse inference to be drawn against him.

30. Reference may also be had to the judgment of the Supreme Court in *Anita Sharma Vs. New India Assurance Company Ltd.*, (2021) 1 SCC 171, wherein the Supreme Court has held that where the owner-cum-driver of the offending vehicle was setting up a

defence that the accident was a result of not his but someone else's carelessness or rashness, the onus was on him to step into the witness box and explain how the accident had taken place.

31. Drawing a corollary from the said observation, the best person to cross-examine the eye-witness, PW-2 and to establish that his testimony was not creditworthy, was the owner of the vehicle, who admittedly was present at the spot.

32. As noticed hereinabove, the owner of the vehicle defended proceedings and even appear as a witness, but chose not to cross-examine the eye-witness, PW-2.

33. Accordingly, I find no infirmity in the view taken by the Tribunal that testimony of PW-2, the eye-witness, Mohd. Sagir is creditworthy and can be relied upon. This observation is further in the light of the law laid down by the Supreme Court that the claims have to be decided by the Tribunal on the touchstone of preponderance of probabilities and not on the basis of the proof beyond reasonable doubt.

34. In my view, Tribunal has rightly held that the oral testimony of PW-2 has withstood the test of cross-examination and even the testimony of the owner Vikram Pratap Singh, who had examined himself as R2-W1, was not sufficient to discard the oral testimony of PW-2.

35. The Tribunal has also noticed that the driver and owner of the offending vehicle were taking contradictory stands as to the identity of the driver and as noticed by this Court hereinabove, there is also a discrepancy in the statements given by Vikram Pratap Singh about the accident. Accordingly, the testimony of Vikram Pratap Singh could not be relied upon and the Tribunal has rightly declined to place reliance on the same.

36. Once this Court holds that the accident had taken place between the offending vehicle and the scooty, it was obligatory on the part of the owner of the vehicle to explain in what circumstances, the accident had taken place to dispel the contention of rash and negligent driving.

37. Since no explanation has been given by the owner of the vehicle about the manner in which the accident had taken place, on the other hand, a contradictory having been taken, the Tribunal was right in holding that the owner and driver of the offending vehicle was driving the same in a rash and negligent manner.

38. In view of the above, I find no infirmity in the view taken by the Tribunal in holding the driver and owner of the offending vehicle liable and since the vehicle was insured with the appellant holding the appellant liable to satisfy the award.

39. Accordingly, the appeal is dismissed. This would be without prejudice to the cross-appeal filed by the claimants seeking enhancement of compensation.

40. Tribunal is accordingly directed to disburse the amount as per the scheme of disbursal provided in the award.

SANJEEV SACHDEVA, J.

DECEMBER 10, 2021

NA

