



2023: DHC: 0328



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

Reserved on: 01.11.2023
Pronounced on: 21.11.2023

+ **MAC.APP. 597/2016 & CM APPL. 4796/2023**

PRAVEEN SHARMAAppellant

Through: Mr.Mohit Sharma, Adv.

versus

RAJURespondent

Through: Mr.Mimansak Bhardwaj,
Ms.Vidya Mishra and
Mr.Sunny Chhonkar, Adv.
along with respondent in
person.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This appeal has been filed challenging the Award dated 30.04.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, (North-East District), Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal'), in DAR No. 135/14 titled as ***Raju v. Praveen Sharma***.

2. The above Claim Petition was registered on a Detailed Accident Report (in short, 'DAR') filed by the Investigating Officer on 23.07.2014. It is the case of the claimant/respondent herein that on 22.12.2013, at about 03:30 PM, he was returning home by a bus after finishing his duty. When he reached at the Welcome bus stop and was standing at the bus stand, a Car bearing registration number HR-51Y-



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1455 (hereinafter referred to as the 'Offending Vehicle'), which was being driven by the appellant herein at a very high speed and in a rash and negligent manner, came from the Seelampur side and hit the claimant. As a result of the accident, the claimant fell down and received grievous injuries. He was taken to the GTB Hospital. FIR No. 569/2013 under Sections 279/337 Indian Penal Code, 1860 was also registered at Police Station Seelampur in this respect.

3. The appellant herein denied that the accident had taken place with the Offending Vehicle. He stated that he had been falsely implicated in the criminal case.

4. The learned Tribunal, after considering the evidence led before it, has found that the claimant had sustained injuries in the accident which occurred on 22.12.2013 due to the rash and negligent driving of the Offending Vehicle by the appellant herein. The learned Tribunal has awarded compensation of Rs.2,99,096/- along with interest at the rate of 9% per annum from the date of filing of the DAR, that is, 23.07.2014, and in the case of failure to deposit the same, interest at the rate of 12% per annum for the default period has been awarded in favour of the respondent and against the appellant.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

5. The appellant challenges the Impugned Award by reiterating that the appellant has been falsely implicated in the above accident. In support of this challenge, the learned counsel for the appellant submits that FIR No. 569/2013 was registered at Police Station Seelampur on



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22.12.2013, that is the date of the accident, recording that there was no eyewitness to the accident and even the respondent herein was not in a position to give his statement. Therefore, the identity of the vehicle with which the accident had taken place was unknown. The police recorded the statement of the respondent on 26.12.2013, wherein, the respondent *inter alia* stated that a vehicle coming from Seelampur side had hit him from the front because of which he fell down and suffered injuries. He further stated that he could not read the registration number of the vehicle with which the accident had taken place. He stated that the vehicle with which the accident took place ran away after the accident and someone called on the Emergency Number '100', pursuant to which a Police Control Room (in short, 'PCR') van came and took him to the GTB Hospital. He further stated that he would inform the registration number of the vehicle with which the accident had taken place after making an inquiry.

6. The learned counsel for the appellant submits that for the first time, the respondent gave the registration number of the offending vehicle as the vehicle which had caused the accident, only on 18.02.2014, that is, one and a half months after the date of the accident. In the said statement, the respondent stated that after the accident, he had almost lost consciousness because of which he could not inform the registration number of the vehicle with which the accident had taken place. He further stated that as per his information, the vehicle's registration number was HR-51Y-1455 and it was of white colour.



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7. The learned counsel for the appellant submits that looking into the nature of the accident and the injury suffered by the respondent, it is inconceivable that he could have seen the registration number of the vehicle with which the accident had taken place. He submits that the statement given on 18.02.2014 was only an afterthought and with a *mala fide* intent to implicate the Offending Vehicle in the accident.

8. The learned counsel for the appellant further draws my attention to the letter dated 25.08.2014, whereby the respondent stated that he had seen the registration number of the Offending Vehicle while it was approaching towards him from the Seelampur red light. The respondent stated that he gave a signal to the Offending Vehicle to stop by raising his hand. He stated that he had clearly seen the registration number of the Offending Vehicle. He stated that after the accident, he had lost consciousness and when he regained the same, he was in the hospital. He stated that when the Police took his statement he was not in a proper condition because of which he could not give the registration number of the vehicle with which the accident had taken place, at that moment. He stated that after his health had improved, he had gone to the Police Station to give the registration number of the Offending Vehicle. The learned counsel for the appellant submits that the contents of this letter clearly belie the testimony of the respondent before the learned Tribunal, wherein he had stated that he was conscious after the accident and had noted down the registration number of the vehicle and that he had told the vehicle's registration number to the police persons after about two days of the accident and that he had informed the registration number



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of the Offending Vehicle to the Investigating Officer on 26.12.2013 itself.

9. The learned counsel for the appellant submits that the only reason for the learned Tribunal to have held that the accident had taken place with the Offending Vehicle was on account of the purported reluctance of the appellant to produce the Offending Vehicle for Mechanical Inspection. He submits that the learned Tribunal has, however, failed to appreciate that the appellant, vide letter dated 06.04.2014, had immediately, on receiving the notice for production of the Offending Vehicle, complained to the Station House Officer (in short, 'SHO') of Police Station Seelampur that pursuant to the notices received from the Investigating Officer, he had appeared before the Investigating Officer two or three times and had pointed out that the Offending Vehicle was not involved in the said accident and that he was being falsely implicated in the same by the Police and the respondent. He further complained that the Investigating Officer was compelling him to produce the Offending Vehicle so that it could be impounded. He complained that without carrying out any investigation, the Investigating Officer was merely trying to implicate the appellant in the accident and impound the Offending Vehicle. He had also requested the Investigating Officer to carry out a Test Identification Parade (in short, 'TIP') of his vehicle and to get it mechanically inspected, however, the Investigating Officer was merely interested in impounding the same.

10. The learned counsel for the appellant submits that, therefore, no adverse inference could have been drawn against the appellant for his



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purported reluctance to produce the Offending Vehicle for mechanical inspection, as the appellant was afraid that his vehicle would be impounded and he would be falsely implicated in the case. He submits that, therefore, the learned Tribunal has based its conclusion merely on conjectures and surmises rather than any evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

11. On the other hand, the learned counsel for the respondent, placing reliance on the judgment of the Supreme Court in *Bimla Devi and Others v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SCC 530, submits that the strict proof of an accident being caused by a particular vehicle in a particular manner may not be possible to be met by the claimant; the claimant is merely to establish his case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt cannot be applied.

12. He submits that in the present case, immediately on being discharged from the hospital, the respondent had disclosed the registration number of the Offending Vehicle which had caused the accident. He submits that, in fact, the appellant along with some other persons, approached the mother of the respondent, offering money for closing the case against the appellant, and a complaint in this regard was given by the mother of the respondent to the Police on 19.05.2014.

13. He further submits that in spite of the repeated directions/notices by the Investigating Officer to produce the



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Offending Vehicle for mechanical inspection, the appellant had refused to cooperate in the investigation, and it is only pursuant to the order dated 07.10.2014 passed by the learned Tribunal that the appellant finally produced the Offending Vehicle for inspection. He submits that in the meantime, the appellant filed an application under Section 340 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') against the Investigating Officer, which was dismissed by the learned Metropolitan Magistrate vide order dated 22.05.2014. The appellant filed an appeal, being CA No. 13/2014, titled as *Sh.Praveen Sharma v. The State of NCT of Delhi & Anr.*, challenging the said order, which also came to be dismissed by the order dated 29.11.2014 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, holding that the appellant was not cooperating in the investigation of the case and there is no concealment of material facts by the Investigating Officer. Still not satisfied, the appellant filed a Writ Petition before this court, being W.P.(CrI) 172/2015 titled as *Praveen Sharma v. State of NCT of Delhi & Anr.*, which was dismissed by this Court vide its order dated 12.05.2016, holding that there was no material on record to establish that the Investigating Officer had committed perjury and hence the appeal under section 341 of CrPC had been rightly dismissed.

14. He submits that from the above, it would be apparent that the appellant did not cooperate in the investigation and, in fact, tried to mislead the same as the Offending Vehicle was not insured. He submits that, therefore, no fault can be found in the Impugned Award for its finding that the accident had taken place with the Offending



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Vehicle hitting the respondent/claimant thereby causing grievous injuries to him.

15. He places reliance on the judgment of the Supreme Court in *State of U.P. v. Naresh & Ors.*, (2011) 4 SCC 324, to submit that the evidence of the injured must be given due weightage and is generally considered to be very reliable, as it is unlikely that he would like to falsely implicate someone else and let the actual offender go scot-free and unpunished. He submits that in the present case as well, it is not shown by the appellant as to why the respondent would falsely implicate the appellant instead of letting the owner of the vehicle which actually caused the accident, go unpunished.

16. Placing reliance on the judgment of the Supreme Court in *State of Rajasthan v. Smt. Kalki & Anr.*, (1981) 2 SCC 752 he submits that minor discrepancies in the statement of the respondent/claimant cannot cast a doubt on his statement, as with the lapse of time, there can be normal errors of memory and due to the shock and horror of the accident, his mental state may have been unstable at the time when his first statement was recorded by the Police.

ANALYSIS & CONCLUSION

17. I have considered the submissions made by the learned counsels for the parties.

18. While it is true that in a Claim Petition filed under Section 166 of the Act, the claimant is to prove its case only on the touchstone of preponderance of probabilities and not on the standard of proof beyond reasonable doubt, as is applicable to a criminal trial, at the



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same time, in absence of meeting even such standard, the Court shall have no option but to dismiss the claim.

19. It is to be remembered that the Act provides different remedies to a victim of a road accident to claim compensation. The ingredients for making a claim under each of these remedies are different. For making a claim under Section 163A of the Act, as was then applicable, the claimant is not to prove that the offending vehicle was being driven in a rash and negligent manner, for a claim under Section 166 of the Act, this is a pre-requisite (Refer: ***Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Ltd., Baroda***, (2004) 5 SCC 385). Claim can also be made under Section 161 of the Act in the case of 'hit and run motor accident', where the identity of the motor vehicle which caused the accident cannot be ascertained in spite of reasonable efforts for the purpose. These remedies are independent of each other and, therefore, the claimant while making a claim under any of these Sections, has to satisfy the ingredients thereof. Merely because the Act is a beneficial piece of legislation, deserving liberal construction, the court cannot ignore the law of evidence and grant a claim even though the claimant has been unable to prove its claim by satisfying the pre-conditions laid down by the provisions of the Act even on the touchstone of preponderance of probabilities.

20. In ***Oriental Insurance Co. Ltd. v. Meena Variyal and Others***, (2007) 5 SCC 428, the Supreme Court has held that though it may be true that the Act, insofar as it relates to claims for compensation arising out of road accident, is a beneficial piece of legislation and that subject to the rules made in that behalf, the Motor Accident Claims



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Tribunal may follow a summary procedure in dealing with a claim, that does not mean that the claimant is not to establish its case by cogent evidence and only his/her statement is sufficient to prove the same. It would depend on the facts and circumstances of each case to determine as to whether the claimant has been able to discharge the onus of proof of establishing the involvement of the Offending Vehicle and the manner of the accident.

21. In ***National Insurance Company Ltd. v. Nandabai***, 2017 SCC OnLine Bom 6740, the High Court of Bombay observed as under:

“20. I have elaborately scanned the evidence of said two witnesses. I need not to reiterate the entire discussion made by me. Suffice it to say that the vital admissions which have been given by these witnesses in their cross-examination lead to the only conclusion that they had not eye witnessed the alleged incident. The evidence of both these witnesses is highly improbable and untrustworthy and hence cannot be relied upon. As has been observed by the Honourable Apex Court in the case of Oriental Insurance Company v. Meena Variyal, (2007) 5 SCC 428, it may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of the accidents is a beneficent legislation and it may also be true that subject to the Rules made in that behalf the Tribunal may follow a summary procedure in dealing with the claim, it does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law while appreciating the evidence adduced in the matter and in determining the claim for compensation.

21. In a claim under section 166 of the Act, the primary burden is on the claimant to prove that the alleged accident happened because of



the rash and negligent driving of the vehicle allegedly involved in the said accident. To prove the involvement of the vehicle is thus sine qua non and, thereafter, the other issues would arise whether the driver of the vehicle was rash or negligent in driving the said vehicle or otherwise. In the present matter the very involvement of the offending vehicle has not been proved by the claimants. As stated hereinabove, PW 2 Bhanudas and PW 3 Deepak were the only witnesses examined by the claimants to prove the involvement of the offending truck in occurrence of the alleged accident. When the evidence of both these witnesses is found untrustworthy and unbelievable, the finding recorded by the Tribunal holding the involvement of the subject truck in occurrence of the alleged accident to have been proved, has to be set aside and is accordingly set aside."

(Emphasis supplied)

22. In **New India Assurance Co. Ltd. vs. Devki & Ors.**, Neutral Citation No.2016:DHC:1735, this Court has held that:

"5. It is well settled that in proceedings arising out of a claim petition under Section 166 of MV Act based on fault liability principle, a person cannot be held liable unless he contravenes any of the duties imposed on him by the common law or by the statute. In the case of a motor accident it is imperative that the claimants show by some evidence that the driver of the motor vehicle had been negligent in relation to the said vehicle and thereby had caused an accident resulting in bodily injuries or death or damage to the property so as to be held liable as the principal tort-feasor. The owner's liability arises out of his failure to discharge a duty cast on him by the law, on the principle of vicarious liability. Proof of negligence is necessary before the owner or the insurance company may be held liable for payment of



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compensation in a motor accident claim case brought under Section 166 MV Act.

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8. *In the facts and circumstances, this Court finds it difficult to follow the view taken in Pushpa Rana (supra). Since the law declared by the Supreme Court in Meena Variyal (supra) is binding, there is no escape from the conclusion that it is the burden of the claimants in a petition under section 166 of MV Act to prove negligence. Should they find it difficult to prove evidence with regard to negligence, the option to have resort to no-fault liability on the structured formula under Section 163A of MV Act is always available to seek just compensation. The case of Bimla Devi (supra) cannot be an illustration to hold otherwise inasmuch as it is clear from the narration of facts noted therein that an eye witness was available and the conclusion on facts had been reached on the basis of his testimony.”*

23. In ***Surender Kumar Arora & Anr. v. Manoj Bisla & Ors.***, (2012) 4 SCC 552, the Supreme Court was dealing with a case where the claim petition under Section 166 of the Act was dismissed by the learned Motor Accident Claims Tribunal therein, on the ground that the claimants/parents of the deceased therein failed to prove the negligence on part of the driver of the vehicle. It was held that once a claimant/applicant approaches the Tribunal seeking compensation under Section 166 of the Act, it is to necessarily establish the negligence of the driver or the owner of the vehicle concerned.

24. In the present case, the FIR registered on 22.12.2013, that is, the date of the accident, did not mention the registration number of the Offending Vehicle. On the other hand, it was stated that there was no



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eyewitness found at the spot of the incident or in the hospital. The first statement of the respondent recorded by the Police on 26.12.2013 (Ex.PW1/R1), also did not disclose the registration number of the Offending Vehicle. The registration number of the Offending Vehicle was disclosed for the first time by the respondent only on 18.02.2014. Though in a given case, mere delay in disclosing the registration number or identity of the vehicle which caused the accident may not be fatal, in the present case, it is of much significance.

25. In various letters and even in his evidence before the learned Tribunal, the respondent admits that as a result of his accident, he had lost consciousness; though in the letters he states that he lost consciousness immediately on the occurrence of the accident, in his statement before the learned Tribunal, he improves on the claim by stating that he lost his consciousness only in the hospital. In fact, on the date of the accident, the doctors had certified the claimant to be unfit for making a statement. This itself shows that the claimant was not in a position to have noticed or remembered the registration number of the Offending Vehicle. The same appears to have been falsely taken later in order to involve some vehicle in the accident, as otherwise, the claimant would have been entitled to claim compensation only under Section 161 of the Act, which is rather is meagre.

26. Even the nature of the accident that is described by the respondent, would show that he could not have noticed the registration number of the vehicle with which the accident had taken place with such precision. The accident had taken place when he was crossing a



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busy road, and as per his case, when suddenly a vehicle coming from the Seelampur red light side at a fast speed hit him. When the accident takes place in such a situation, it is not possible for the victim to note down the registration number of the Offending Vehicle with such precision. In his statement on 18.02.2014, the respondent disclosed the registration number of the vehicle with which the accident had taken place with complete precision. The respondent being able to note and remember the registration number of the vehicle with which the accident had taken place, appears to be almost impossible keeping in view the manner in which the accident had taken place. This itself is sufficient to cast a doubt on his statement.

27. The respondent further states before the learned Tribunal that he had disclosed the registration number of the vehicle to the Police when his statement was recorded by the Police after two or three days of the accident. This statement is belied by his own statement dated 18.02.2014, and the letter dated 25.08.2014, wherein he admits that the registration number of the Offending Vehicle was disclosed at a later stage and not in his first statement.

28. The Accidents Information Report (in short, 'AIR') dated 09.01.2014 (Ex-RW1/1) also records that it was a Hit-and-Run case and the registration number and the type of vehicle with which the accident had taken place was unknown.

29. The learned Tribunal finding that the respondent had been able to prove that the accident had taken place with the offending vehicle being driven in a rash and negligent manner and hitting the respondent, is based only on the appellant's purported resistance to



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produce the Offending Vehicle for mechanical inspection. In my opinion, the said finding is also not sustainable for the reason that the learned Tribunal has failed to appreciate that immediately on receiving notices for production of the vehicle, the appellant had addressed a complaint dated 06.04.2014 to the superior of the Investigating Officer, that is, the SHO, complaining that he was being falsely implicated in the accident by the Investigating Officer and the Investigating Officer was only interested in impounding his vehicle. In the said letter/complaint, the appellant had also expressed his consent for TIP of his vehicle to be conducted and the vehicle to be sent for mechanical inspection without impounding the same. The Investigating Officer did not act on the said letter/complaint, but instead filed a complaint for non-compliance with the notice for production of the vehicle.

30. Though it may be true that the application filed by the appellant under Section 340 CrPC in such a complaint proceedings, may have been dismissed as the appellant was unable to prove that his complaint was to the knowledge of the Investigating Officer, however, at the same time, the fact that the appellant had indeed made such a complaint to the SHO stood admitted and proved. In my view, therefore, no adverse inference could have been drawn against the appellant for his reluctance to produce the Offending Vehicle for a mechanical inspection on receiving notices for the same from the Investigating Officer. The appellant was clearly apprehensive of the fact that he was being falsely implicated in the accident by the Police in connivance with the respondent/claimant, and that his vehicle



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would be impounded. He did what any reasonable and prudent person would do, that is, to make a complaint in this regard to the superiors of the Investigating Officer, hoping for justice to be done to him.

31. The submission of the learned counsel for the respondent that the respondent would have no occasion to falsely implicate the Offending Vehicle in the accident, also cannot be accepted. The compensation that is payable in case of a Hit-and-Run case is far lesser than what the respondent would be entitled to if he was able to establish that the accident had taken place with the Offending Vehicle being driven in a rash and negligent manner. In any case, only on the basis of the above submission, and in the absence of other proof, the liability to pay compensation cannot be fastened on the appellant.

32. In view of the above, I find that the respondent had been unable to prove that the accident had taken place with the Offending Vehicle being driven in a rash negligent manner and hitting the respondent resulting in the injury suffered by him.

33. Consequently, the Impugned Award is set aside. The Claim Petition filed by the respondent shall stand dismissed.

34. The statutory amount deposited by the appellant be returned back to the appellant along with interest accrued thereon.

35. The appeal is allowed. The pending application is disposed of as having been rendered infructuous. There shall be no orders as to costs.

POST SCRIPT

36. In case the respondent is entitled to compensation under the scheme of the Government of NCT of Delhi or of the Delhi State



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Legal Services Authority for a hit and run case, the respondent shall be entitled to make an application to the concerned authorities for claiming such compensation. In case such an application is filed, the same shall be considered by the said concerned Authorities condoning the delay in filing the same.

NAVIN CHAWLA, J.

NOVEMBER 21, 2023/rv/SS

Click here to check corrigendum, if any