



2023:DHC:8074



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

Reserved on: 04.10.2023

Pronounced on: 07.11.2023

+ **MAC.APP. 1000/2017 & CM APPL. 41450/2017, CM APPL. 12586/2021**

ANKIT SHARMA

..... Appellant

Through: Mr.Abhinav Singh and
Ms.Sudha Arya, Advocates

versus

SANGEETA KUMARI & ORS

..... Respondents

Through: Mr.Manish Kumar and
Mr.Chandan Kumar, Advocates

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 20.07.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-01, West District, Tis Hazari Courts, New Delhi (hereinafter referred to as the 'Tribunal') in New MACT Case No. 476584/16, titled as ***Smt. Sangeeta Kumari and Ors v. Sh. Ankit Sharma and Anr..***

2. Briefly stated, it is the case of the Claimants/respondents herein that on 01.05.2013, at about 10:30 pm, the deceased- Sh. Anil Kumar was proceeding on his motorcycle towards his residence at Dal Mill, Uttam Nagar from Ashok Vihar via Chander Vihar Road, Vikas Puri. He filled up petrol in his motorcycle at H-3 Petrol Pump, Chander Vihar, Vikas Puri. As he came out of the petrol pump and was taking a



2023:DHC:8074



turn towards Chander Vihar side, another motorcycle bearing registration no. DL8SAL3367, being driven on the wrong side of the road by the appellant- Sh. Ankit Sharma at a very high speed and in a rash and negligent manner, hit the motorcycle of the deceased with great force. As a result of the accident, the deceased along with his motorcycle fell down on the road and the deceased sustained grievous injuries. Deceased was removed to DDU Hospital at Harinagar, where he ultimately expired on 02.05.2013.

Appellant's Challenge

3. The learned counsel for the appellant submits that the appellant has been falsely implicated in this case. He submits that there is no eyewitness to the accident and Mr. Chuttan (PW-3) has been falsely claimed to be the eyewitness to the accident. He submits that (PW-3) also gave his testimony before the learned Court trying the FIR no. 140/2013 as (PW-1). In his statement before that Court, he admitted that he had not seen the accident taking place. The learned counsel for the appellant submits that the learned Tribunal has, therefore, erred in placing reliance on the statement of Mr. Chuttan for its finding that the accident had taken place with the motorcycle driven by the appellant in a rash and negligent manner hitting the motorcycle of the deceased.

4. He submits that in fact, the deceased had met with an accident with a truck, and it was the deceased who came out of the petrol pump all of a sudden and without watching for the traffic on the main road. He submits that the appellant was driving his motorcycle at a normal speed and was going towards the outer ring road from Chander Vihar.



A truck was coming parallel to the motorcycle of the appellant. The deceased suddenly came out on the road from the petrol pump on his motorcycle and was hit by the said truck. Due to the accident between the truck and the motorcycle of the deceased, the vehicle of the appellant was also hit and he too sustained injuries. He submits that the Impugned Award is, however, based only on the testimony of PW-3 and the fact of the registration of the FIR and the final report against the appellant. He submits that the learned Tribunal has, therefore, erred in its findings and the appellant cannot be made liable to pay the compensation to the claimants.

5. Placing reliance on the judgment of the Supreme Court in *Oriental Insurance Company Limited v. Meena Variyal*, (2007) 5 SCC 428, and of this Court in *New India Assurance Company Limited v. Harsh Mishra & Anr.*, (2007) 5 SCC 428, he submits that mere registration of a criminal case is not enough to prove the negligence even on the touchstone of preponderance of probabilities. He submits that to succeed in its claim under Section 166 of the Motor Vehicles Act, 1988, the claimants must prove the negligence on part of the Offending Vehicle. He submits that in the present case, as statement of (PW-3) cannot be relied upon, there is no evidence of the appellant causing the accident by driving his motorcycle in a rash or negligent manner.

Respondents' Submissions

6. On the other hand, the learned counsel for the respondents submits that the learned Tribunal has rightly held that the accident had



2023:DHC:8074



taken place due to the appellant driving his motorcycle in a rash and negligent manner. He submits that merely because PW-3 turned hostile during his cross-examination in the criminal trial and falsely deposed that he had not seen the accident himself, his testimony before the learned Tribunal, which had withstood the cross-examination, cannot be discredited. He submits that even otherwise, the burden of proof in a criminal trial is far stricter and stringent as compared to a Claim Petition (under MV Act, 1988). He submits that in the present case, respondent no.1 had not complained against the registration of the FIR or the final Report. He submits that even the Site Plan prepared by the Police after the accident would show that the accident had taken place with the motorcycle of the deceased being driven on the wrong side of the road.

Analysis and Findings

7. I have considered the submissions made by the counsels for the parties.
8. In the present case, PW-3-Mr. Chuttan, in his statement before the learned Tribunal, has deposed that on the date of the accident, that is, 01.05.2013 at about 10:30 PM, he was going from Subhash Nagar to the house of his brother at Chander Vihar, Delhi. He stated that as the deceased was coming out of the petrol pump on his motorcycle, the appellant, who was driving his motorcycle on the wrong side of the road, collided with the motorcycle of the deceased and both fell down. He stated that he was not acquainted with either of the parties. In his cross-examination, he stated that he had narrated the manner of



2023:DHC:8074



the accident to the Police. There is some contradiction as to whether his statement was recorded by the Police or not, however, in my opinion, the same is not relevant. His testimony could not be, in any manner, shaken during the process of cross-examination. In fact, he was not cross-examined by the appellant at all. Merely because PW-3, in the course of his cross-examination in the criminal trial, stated that he had not himself witnessed the accident, in my opinion, is not sufficient to disbelieve his statement recorded by the learned Tribunal. It is relevant to note that even in the criminal trial, PW-3 had duly proved his presence at the site of the accident and the same could not be shaken even in his cross-examination. There could be extraneous reasons for PW-3 to resile out of his statement before the learned Court trying the criminal offence alleged against the appellant, however, the same can have no bearing in the present case where his statement had been recorded and he had stuck to his version on the manner in which the accident took place.

9. The appellant also produced himself as a witness (R1W1) before the learned Tribunal. In his cross-examination, he stated that he does not remember the actual facts about the accident. He further stated that he does not remember whether the bike of the deceased collided with some other vehicle or not. He stated that he does not remember with whom his accident took place. Therefore, his own statement does not corroborate the submission made by the learned counsel for the appellant and the story set up by the appellant that the accident had taken place with a truck hitting the motorcycle of the



2023:DHC:8074



deceased. It also does not corroborate the defence of the appellant that the deceased was driving his motorcycle negligently.

10. In *Janabai WD/o Dinkarrao Ghorpade and Ors v. ICICI Lambord Insurance Company Limited* (2022) 10 SCC 512, the Supreme Court has reiterated that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), which is summary in nature. The application under the Act has to be decided on the basis of the evidence led before the Tribunal and not on the basis of the evidence which should have been or could have been led in a criminal Trial.

11. In *Sunita & Ors. v. Rajasthan State Road Transport Corporation & Anr.*, (2020) 13 SCC 486, the Supreme Court observed that merely because the vehicle owner has been acquitted in the criminal trial, is no reason for the rejection of the claim under the Act. It was reiterated that the nature of proof required to establish culpable rashness, punishable under the Indian Penal Code, 1860, is far more stringent than of negligence under the law of tort to create liability. The Supreme Court further held that the evidence of the claimants is to be examined on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt cannot be applied thereto.

12. Applying the above test to the facts of the present case, the statement of PW-3 duly establishes the culpability of the appellant in the accident. This is corroborated even by the Site Plan prepared by



2023:DHC:8074



the Police. The statement of the appellant himself does not inspire confidence.

13. For the above reasons, the judgment of the Supreme Court in *Meena Variyal* (supra) and of this Court in *Harsh Mishra* (supra) do not apply to the facts of the present case.

14. In my opinion, therefore, no fault can be found in the Impugned Award.

15. The appeal and the pending applications are accordingly dismissed.

16. There shall be no order as to costs.

17. The Statutory amount along with interest accrued thereon be released in favour of the respondents. The same shall be adjusted against the compensation payable by the appellant to the respondents under the Impugned Award.

NAVIN CHAWLA, J.

NOVEMBER 7, 2023/am