



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

% **Judgment reserved on : 12 March 2024**
Judgment pronounced on : 29 April 2024

+ **MAC. APP. 382/2013 & CM APPL. 6893/2013**

SHAKUNTALA DEVI & ORS Appellants
Through: **Mr. Ravindra Narayan, Adv.**
with appellant no. 2 in person
versus

SUNIL Respondent
Through: **None**

+ **MAC. APP. 384/2013 & CM APPL. 6900/2013**

SHAKUNTALA DEVI & ORS.Appellants
Through: **Mr. Ravindra Narayan, Adv.**
with appellant No.2 in person.
versus

VIJAYRespondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgement shall decide the above noted two appeals preferred by the appellant No. 1/respondent No. 3/firm/registered owner of the offending vehicle in terms of Section 173 of the Motor Vehicle Sct, 1988¹ assailing the impugned common judgement-cum-award dated 12.10.2012 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, South District,

¹ M.V. Act



New Delhi² in Suit No. 115/2010 and Suit No. 454/2010, whereby the claim petitions of the two claimants were allowed and the liability to pay the compensation was fastened upon the shoulders of the appellants since the offending vehicle was not insured for third party risks.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of claimants that on 14.01.2007 at about 09.00 PM, the claimants i.e., Sunil and Vijay³, were travelling on a motorcycle bearing registration No. DL-3S-T-2773. Vijay was driving the motorcycle while Sunil and one Prakash were the pillion riders. Upon reaching near the 21st Milestone, Shiv Murti on the National Highway No. 8, the offending vehicle (Mahindra Marshal) bearing registration No. DL-1L-E-7350, driven in a rash and negligent manner, collided with the motorcycle, causing the claimants to fall and sustain injuries. The offending vehicle was owned by the appellant No. 1/respondent No. 3, but it was not insured at the time of the accident.

3. The claimants were taken to the Hospital and their MLCs were prepared. The information regarding the accident was given by an eye-witness by calling on No. 100 and an FIR bearing No. 35/2007 was registered at the PS Vasant Kunj.

4. At the time of the accident, Sunil was of 31 years of age and was doing a private job and earning a salary of Rs. 20,000/- p.m., whereas Vijay was 32 years of age and was doing a private service

² Tribunal

³ Sunil (Claimant) in MAC. APP. 382/2013



with the CHS Company and earning a salary of Rs. 5,000/- p.m. Due to the accident, it was pleaded that both the claimants suffered pain and sufferings and various handicaps in life besides not able to work for a period of eight months.

PROCEEDINGS BEFORE THE TRIBUNAL AND THE IMPUGNED JUDGMENT-CUM-AWARD:

5. The claimants filed their respective claim petition petitions before the learned Tribunal. Sunil filed a claim petition bearing MACP No. 115/2010 titled as “*Sh. Sunil v. Bijendra Kumar Giri @ Vijender and Ors.*” and Vijay filed claimed petition bearing MACP No. 454/2010 titled as “*Sh. Vijay v. Bijendra Kumar Giri @ Vijender and Ors.*”. Notice of the petitions were served upon the Appellants herein, wherein the appellants appeared and filed their written statements, denying the averments made in the petition and stating that no accident took place. The appellants stated that the eye-witness named was an interested eye-witness, and that the petitions were filed to harass the appellant.

6. Based on the pleadings of the parties, following issues were framed on 30.09.2009: -

- “1. Whether the petitioners Vijay and Sunil received injuries due to an accident on 14.01.2007 at about 9.00 PM at National Highway No. 8, near Shiv Murti Mahipal Pur, New Delhi which was caused due to rash and negligent driving of vehicle no. DL 1L E 7350 by R-1, by the vehicle owned by R-2? Opp.
2. The amount of compensation, petitioners are entitled to?
3. Relief.”

Vijay (Claimant) in MAC. APP. 383/2013



2024:DMC:3344



7. Learned Tribunal vide order dated 31.08.2010 consolidated both the claim petitions for a joint trial. Learned counsel for appellant no.2 argued that the MLC of injured Sunil **Ex. PW1/R1** revealed alcohol consumption, highlighting material difference between the petition/affidavit and investigation findings. It was also put forth that the FIR did not disclose the offending vehicle's number, and the police failed to seize its bumper and number plate, allegedly fallen post-accident. The appellants submitted that it was a case of contributory negligence, citing three occupants on the motorcycle and Sunil's intoxicated state as factors.

8. On being prodded in the cross-examination, PW Sunil testified that only the two claimants were on the motorcycle and both were wearing helmets. He denied that he was under the influence of alcohol. When confronted with his police statement, he acknowledged that the details about the bumper and the number plates were not mentioned and was unsure if they were seized. He refuted the presence of a third person (Prakash) on the motorcycle, stating Prakash was standing aside during the accident. However, when confronted with his statement under Section 161 of the Cr.P.C⁴, he admitted to driving the ill-fated motorcycle with two pillion riders when the accident occurred and denied the influence of alcohol, whereas the doctor's MLC (**Ex. PW1/R1**) of Sunil noted the smell of alcohol.

9. On being cross examined, Vijay reiterated the same facts as Sunil. He also mentioned that Ravi had written down the number of



2024:DMC:3341



the offending vehicle on a piece of paper and handed it to their advocate. Appellant No. 3 tendered his affidavit as **Ex. R1W1/A**, stating that he worked as a driver for appellant no. 1 and was off duty on the day of the accident i.e., 14.01.2007. He claimed false implication in the case and asserted that he did not file any complaint to any authority in regards to his false implication. Additionally, the appellant no. 3 acknowledged facing criminal proceedings in the Saket District Court.

10. In regards to Issue No. 1, it was decided partly in favour of the claimants and partly in favour of the appellants. The appellants submit that the claimants mis-characterized the location and nature of the accident, which was central to their case. They contend that the determination of contributory negligence contradicts the evidence on record and against the well-settled principles of law. Additionally, they have assailed the impugned judgement-cum-award on the basis that the learned Tribunal failed to recognize Sunil's intoxication at the time of the accident and the presence of three individuals on the motorcycle. The relevant portion of the judgement is reproduced below: -

“15. Testimony of PW Vijay shows that Sunil was driving the motorcycle at the time of accident and he had taken alcohol. On his MLC the doctor also noticed smell of alcohol. Although, both the petitioners stated that they were two in numbers on the motorcycle and Prakash was standing by their side but the facts stated in the Charge Sheet and other documents and the MLCs on record shows that they were three persons on the motorcycle at the time of accident when they were hit. Although in this case no urine / blood test conforming the presence of alcohol is on record but the record and testimony of Vijay indicate that there were three persons on the

⁴ Code of Criminal Procedure, 1973



2024:DMC:3341



motorcycle at the time of accident and the driver Sunil had consumed alcohol. Keeping these facts into consideration, I am of the view that the petitioners had also contributed to the accident and I hold them responsible for a contributory negligence to the extent of 30%.

16. It has come on record that respondent no.3 was the registered owner of the offending vehicle a and respondent no.2 was managing the affairs on behalf of respondent no.1. It has also come on record that the vehicle was not insured at the time of accident.

17. Issue no.1 is accordingly decided partly in favour of the petitioners and partly in favour of the respondents.”

11. As regards decision on Issue No. 2 is concerned, the learned Tribunal awarded the compensation as follows: -

Petition No.	115/10 (Sunil)	454/10 (Vijay)
Medical Expenses	Rs. 41,000/-	Rs. 21,000/-
Pain and Sufferings and Enjoyment of Life	Rs. 25,000/-	Rs. 25,000/-
Special Diet, Attendant & Conveyance Charges	Rs. 15,000/-	Rs. 15,000/-
Loss of Income	Rs. 37,000/-	Rs. 10,600/-
TOTAL	Rs. 1,18,000/-	Rs. 71,600/-

12. Reverting to the aspect of fixing the liability to pay compensation, since the offending vehicle was being driven by appellant no. 3, the learned Tribunal held that the primary liability to compensate the claimants rested with appellant no. 3. It was further held that given the fact that the offending vehicle belonged to appellant no. 1, and appellant no. 2 was the authorised representative of appellant no.1, they became vicariously liable to compensate the claimants, as the offending vehicle was not insured. The relevant part of the judgement is reproduced below: -



2024:DMC:3341



“29. As regards the liability, the offending vehicle was being driven by respondent no.1, therefore primary liability to compensate the petitioners is that of respondent no.1. The offending vehicle was owned respondent no.3 and respondent no.2 was the authorised representative of the respondent no.3. Therefore, they becomes vicariously liable to compensate the petitioners. It is an admitted position on record that the offending vehicle was not insured. Being a case of contributory negligence, the respondent no. 3 through her AR respondent no.2 is liable in proportion of 70%.”

GROUND FOR THE APPEAL:

13. The appellants have assailed the impugned judgement-cum-award on the ground that the learned Tribunal failed to appreciate that the claimants were required to establish the rash and negligent driving of the appellant no. 3, which the claimants miserably failed to do. Additionally, the appellants contend that the award passed should be set aside since the claimants were unable to substantiate their case in accordance with the account provided to the police.

14. The appellants rely on their written statements before the learned Tribunal and highlight the contradictory stand taken by the claimants and it would be apposite to reproduce the same below: -

“A. According to the case of the petitioner the accident had taken place while the petitioner was coming from the Gurgaon to Delhi which was contradicted by the statement of the alleged eye witness (not produced in court) and the PCR Form. It is submitted that as per the PCR form the alleged accident had taken place on the service road going from Delhi to Gurgaon.

B. The offending vehicle having been hit from behind contradicted by the statements of witnesses so recorded by the police under section 161 Cr. P.C. and the Mechanical inspection report of the motorcycle.

C. The petitioner in his statement had deposed that the bumper along with the number plate had fallen down and thus were able to note the number of the offending vehicle which was contradicted by the fact that no seizure of the bumper and the number plate was made by the police. Also it is impossible for a person to run away



from the spot with his vehicle even when the bumper falls in front of him.

D. The driver of the motorcycle was drunk as was established by the MLC and the statement of the petitioner before the Ld. Tribunal but the driver of the motorcycle categorically told lies about being not drunk.

E. The petitioner and the other petitioner/ injured had stated that they were standing and the third person was standing besides them again making the case of the petitioner absolutely false as in the petition the petitioner had not spoken even a single word about the third person also it was stated that they were coming from Gurgaon to Mahipal Pur and had not state that they were standing. All these lies as told by the petitioner and the other injured witness goes to the root of the case making them ineligible to grant of compensation.”

ANALYSIS & DECISION:

15. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this court unhesitatingly finds that the impugned judgment-cum-award passed by the learned Tribunal requires interference insofar as the issue of contributory negligence on the part of the claimants is concerned.

16. First things first, the findings of the learned Tribunal with regard to involvement of the offending vehicle, i.e., a Mahindra Marshal bearing registration No. DL-1L-E-7350, are beyond any challenge. Although as deposed by PW-1 Sunil, the bumper and number plate of the offending vehicle had fallen after the accident, there is no seizure memo of the same by the police, and no such fact was disclosed to the Investigating Officer during the recording of the statement under Section 161 Cr.P.C during the course of investigation



in the instant motor accident vide of FIR⁵ No. 35/2007 with the Police Station, Vasant Kunj.

17. Be that as it may, learned Tribunal has given correct findings to the effect that the involvement of the vehicle was given to the PCR⁶ on 14.01.2007 Ex.PW-1/2 wherein information was recorded that vehicle bearing registration No. DL-1L-E-7350 had been involved in a motor accident with motorcycle bearing registration No. DL-3S-T-2773. This aspect coming from the official account soon after the motor accident is unassailable.

18. Secondly, while PW-1 Sunil, as well as Vijay, denied that Sunil, who was evidently driving the ill-fated motorcycle, was drunk at the time of accident, there is no reliable report as to the extent of alcohol in his blood. At the same time, PW-1 Sunil cut a sorry figure in his cross-examination, when he acknowledged that there were three persons on the motorcycle, i.e., besides himself, the other injured Vijay, and one Prakash. There is no reason why the Investigating Officer recorded such information with regard to triple riding on the motorbike by the claimants at the time of the accident. There is no merit in the plea by the learned counsel for the appellants that the registration number of the offending vehicle i.e., Mahindra Marshal was not recorded in the FIR, which was evidently lodged at 9.45 p.m. Apparently, there was no delay in lodging the FIR but a bare reading of the same would show that the police reached at the spot/place of occurrence on its own and commenced the investigation.

⁵ First Information Report

⁶ Police Control Room



2024:DMC:3341



19. Without further ado, the aspect of triple riding by itself is sufficient to attribute contributory negligence upon both the claimants in the aforesaid two appeals. It appears that the claimants were out on a joy ride in flagrant violation of laws.

20. It would be apposite to refer to the Statutory provisions in the M.V. Act that also prohibits riding of more than one passenger on a motorcycle. It reads as follows-

“Section 128. Safety measures for drivers and pillion riders. - (1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the drivers seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in subsection (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon.

[129. Wearing of protective headgear. - Every person, above four years of age, driving or riding or being carried on a motorcycle of any class or description shall, while in a public place, wear protective headgear conforming to such standards as may be prescribed by the Central Government:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if, while driving or riding on the motorcycle, in a public place, he is wearing a turban:

Provided further that the Central Government may by rules provide for measures for the safety of children below four years of age riding or being carried on a motorcycle.

Explanation. - "Protective headgear" means a helmet which, -

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motorcycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.]”



2024:DMC:3341



21. This Court in an earlier matter in **Reliance General Insurance Company Limited v. Jagdish**⁷ had an occasion to observe as under: -

“The legislative purpose of prohibiting triple riding on a motorcycle is evident that triple or more riding on a motorbike introduces challenges in navigating the vehicle through the crowd, causes issues as to acceleration of speed and even hampers the application of brakes when necessary due to vehicle’s momentum. Reference can be invited to the decision by the Punjab and Haryana High Court in the case of **Roshan Lal v. Mahabir Singh**, FAO 6546/2016 (O&M) decided on 26.04.2023, where the learned Tribunal on appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 05.09.2011 due to rash and negligent driving of Swift car bearing registration No. HR-26-BK-4221 being driven by respondent No.1, owned by respondent no.2 and insured by respondent No.3. The Tribunal awarded compensation as above along with interest @ 8% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several. However, the Id. Tribunal held the deceased guilty of contributory negligence to the extent of 30% in view of the fact that admittedly, at the time of accident the deceased was triple-riding on the motorcycle bearing registration No. HR-26-AG-2006 along with his father Roshan Lal and brother Ombir.

8. In view of the foregoing discussion, I find that the deceased was guilty of contributory negligence in causing the accident. Although unfortunately, a young life at the age of 20 years was lost, resulting in great loss and discomfort for the parents, but then it was their responsibility alone to teach their son and instil in him respect for the laws of the land. Unfortunately, they suffer irreparable pain and anguish on the death of their young son, but this Court cannot allow any premium to be given for such kind of audacious actions violating the traffic laws. It is in evidence that the victim was not even wearing helmet either. Therefore, the deceased was guilty of contributory negligence, and the amount of compensation is required to be reduced to 50%. As per the order dated 26.05.2016, 40% amount of compensation with interest has already been released to the claimants/parents of the deceased. Let the remaining 10% of the amount of compensation be also released to them with interest as directed by the learned Tribunal within four weeks from today, failing which, appellant/insurance company

⁷ 2024 SCC OnLine Del 1751



2024:DMC:3341



shall be liable to pay interest @ 12% from the date of this judgment till realization.”

22. Reverting back to the instant matter, the culpability of the respondent No.1/driver/appellant No. 3 surely arises from the fact that after causing the accident, he fled away from the spot. The testimonies of PW-Vijay and PW-1 Sunil in both the cases remained uncontroverted and unrebutted with regard to the manner in which the accident occurred and the respondent No.1/driver/appellant No. 3 did not even elect to come in the witness box to refute the evidence on the record.

23. Therefore, in the light of the criminal proceedings slapped upon respondent No.1/driver and on a holistic appreciation of the facts and circumstances of the case, the appellant No.1 cannot wriggle out of the fact of tortuous act of negligence on the part of its driver i.e. respondent No.1(appellant No. 3 herein), and therefore, she shall remain vicariously responsible for the acts done by its driver during the course of performance of his duties as a driver.

24. Having said that the culpability of the claimants/injured should be fixed to the extent of 50% and in view of the fact that the quantum of compensation has been assessed on moderate scales, the claimants/injured persons shall be entitled to compensation of Rs. 59,000/- and Rs. 35,800/- i.e. Sunil and Vijay respectively in the aforesaid two appeals with interest @ 6% per annum from the date of filing of the petition till realization.

25. Although, the appellants are succeeding partly in the present matters, the amount of statutory deposit of Rs. 25,000/- in each case is



2024:DMC:3341



hereby forfeited, and the same shall be paid over to the claimants. Further, in terms of order dated 01.05.2013, this Court directed a stay of the operation of the impugned award subject to the appellants depositing a sum of Rs. 50,000/- with upto date interest. The said amount with accrued interest be released to the claimants forthwith. If there is any balance amount left to be paid, the same be deposited within four weeks from today with the learned Tribunal, failing which the appellant No. 1 shall be liable to pay penal interest @ 9% per annum till realisation. If any amount is to be reimbursed by any of the claimant, presumably claimant injured Vijay, that shall be paid by the concerned claimant within four weeks too, failing which, the same shall be claimable by the appellant with interest @ 9% per annum. If there is left any balance amount after payment of compensation to the two claimants, the same shall be returned to the appellant.

26. Both the above noted two appeals along with the pending applications stand disposed of.

DHARMESH SHARMA, J.

APRIL 29, 2024

Sadiq