



2024:DHC:2029



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 5th March, 2024**
Judgment pronounced on : 14th March, 2024

+ **MAC.APP. 512/2018**

GAURAV KUMAR Appellant
Through: **Ms. Sonal Singh, Adv.**

versus

NIRMAL SINGH & ORS (NATIONAL INSURNACE CO)
..... Respondents
Through: **Mr. N.K. Chauhan, Adv. for**
R-1 & R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/injured has preferred this statutory appeal under Section 173 of the Motor Vehicles Act, 1988¹ challenging the impugned judgment-cum-award dated 20.02.2018, whereby the learned Presiding Officer, Motor Accident Claims Tribunal², Shahdara District, Karkardooma Courts has rejected his application seeking compensation filed in terms of Section 166 read with Section 140 of the M.V. Act.

2. Having heard the learned counsels for the rival parties at the Bar and on perusal of the record, I find that the present appeal is bereft of any merits.

3. Shorn of unnecessary details, a motor accident occurred on 16.02.2009 at about 6:30 AM near village Painga, PS Muradnagar,

¹ M.V. Act

² Tribunal



2024:DHC:2029



Ghaziabad, for which, FIR No.67/2009 was registered under Sections 279/338/427 of IPC read with Sections 177/184 of the M.V. Act. The accident involved tractor trolley bearing registration No.HR-11B-1495 (Swaraj-730) and truck bearing registration No.HR-58A-3042 being driven by respondent No.1, registered in the name of respondent No.2 in the present appeal.

4. Admittedly, the offending truck was insured for third-party risks with respondent No.3.

5. It is relevant to note that the learned Tribunal while rendering the findings as to the factum of the accident and whether or not respondent No.1 was guilty of rash and negligent driving and causing injuries to appellant/claimant, made the following observations:

“10. In the present case, PW1 Gaurav Kumar is the main injured as well as witness to is accident who was supposed to prove this fact being an eye witness of the accident. As per the pleadings of the petitioner/ injured, he was traveling on a tractor trolley loaded with strew / bhoosa and was traveling while standing on running tractor. Admittedly, tractor was not meant to travel by the paid passengers but still injured was travelling by it and that too in standing position which has itself proved that he himself was negligent. Besides it, tractor trolley was loaded with bhoosa upto an extendable height and was carrying a helper Mahesh sitting over it as per judgment R3W1/1 and was being plied in high and excessive speed and driver could not managed it when front tyre of tractor busted and lost control over it and crossed the road after breaking the divider / railing and came on opposite side of the road on the way of the offending vehicle. PW1 has also admitted during the cross examination that if the tyre of the tractor would have not punctured then no accident would have taken place. The truck was on the speed of 70-80 kmph on the highway and speed of tractor trolley also must be not less than it as the tractor broke the railing of the divider on bursting of the tyre and speed was not manageable. Though FIR No. 67/2009 u/s 279/338/427 IPC has been registered against the driver of the offending vehicle, yet it cannot be sole ground to determine the rash and negligent driving



of the offending vehicle to grant compensation u/s 166 of M.V. Act in view of the law discussed herein above. As such, merely on the basis of the involvement of the offending vehicle coupled with registration of FIR against the driver is not sufficient to prove the rash and negligent driving of the driver of offending vehicle until and unless it is proved on record. As such, rash and negligent driving by the Respondent No. 1 to cause this accident could not be proved.

11. Besides the evidence led by the petitioner/ injured, the another way to determine the rash and negligent driving of the offending vehicle is by applying the rule of res ipsa loquitur which is well recognize rule to prove the accident if direct evidence is not available. The laid down in this regard has laid down in **Pushpabai Purshottam Udeshi and Ors. v. Ranjit Ginning & Pressing Co. (P) Ltd. and Anr., AIR 1977 SC 1735** as under.

“6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states: The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed. Vol. 28, at page 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a negligence 'tells its own. story' of negligence on the part of the defendant,



the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.....”

In view of the above said law, it stands proved that the circumstances have to be seen to apply this principle.

12. To determine the circumstances, the facts and circumstances of the case have to be scanned. Rash and negligent act / driving derives from the basic principle that the act of the driver must be hazardous or dangerous without taking due care and caution of other's safety and this lack of care and caution must be with the knowledge that this act may cause injury to other irrespective of any particular ill-will or intention towards anyone to cause injury or likely to be caused. In fact, it must be proved that the driver of the offending vehicle did not apply due care and caution while driving the offending vehicle and this carelessness resulted into causing accident. However, in the present case, the Respondent No. 1 was driving the offending vehicle in his own designated driving lane and even the flow of speed on the road was also slow as admitted by the PW1, but it was the vehicle boarded by the injured which got out of control on bursting of tyre and crossed the road over divider after breaking railing and came on the way of the offending vehicle and hit the offending vehicle and such sudden incident could not be anticipated by anyone or Respondent No. 1 to apply breaks of the vehicle instantly and put the life of occupants of other vehicles being driven in the lane of offending vehicle behind it in danger. The site plan has also supported this fact that the offending vehicle did not violate any traffic rules in causing this accident. Even it is assumed that the driver of the offending vehicle was on high speed, then also high speed is not always to be considered rashness and negligence as held in *Abdul Subhan v. State (NCT of Delhi)* dated 27.9.2006. On the other hand, the speed of the vehicle boarded by the PW1 could be anticipated by the extent of the damage caused by the tractor trolley as tractor trolley not only caused damage the railing but also crossed the road and reached on the wrong side to strike against the offending vehicle and caused this accident. In view of this fact, even if this principle of *res ipsa loquitur* is applied on the facts, then also the circumstances have proved that the vehicle of the injured was in fault and not the offending vehicle as alleged and injured has himself contributed to this fault of the driver of tractor trolley by travelling in standing position on speeding vehicle which



2024:DHC:2029



was also not meant for this purpose. As such, it stands proved that even this principle of res ipsa loquitur has also failed to prove that the Respondent No. 1 was not driving the offending vehicle in rash and negligent manner and accident did not take place by his fault. Rather he could have not anticipated this sudden impact of the tractor trolley to cause this accident by suddenly coming on his way and is not responsible to cause this accident. As such, this issue could not be proved by the petitioner and is decided against the petitioner and in favour of the Respondents.”

6. Learned counsel appearing for the appellant vehemently urged that the learned Tribunal has given an erroneous finding to the effect that the appellant was travelling in a standing position in the trolley attached to the tractor, Overlooking that the appellant, examined as PW-1, in his testimony categorically testified that he was rather standing in the middle of the divider when he was struck by the offending truck, which was being driven in a rash and negligent manner by respondent No.1. It would be relevant to reproduce the contents of paragraph (2) of the affidavit of PW-1 filed in his evidence, which reads as under:

2. That on the unfortunate day i.e. on 16.02.2009 the deponent was going to Village Painga P.S. Niwadi on a tractor-trolley bearing registration No.HR11-b-1495 (Swaraj 730) driven by its driver Sh. Balbir and assisted by Mahesh, when the deponent reached at Police Post- Morta, Opp. Petrol Pump at about 6.30 a.m. the front tyre of the tractor busted and the said tractor-trolley lost its control and collided with the divider and due to forceful impact, the divider collapsed and the tractor- trolley came at the wrong and the truck bearing No.HR58-A-3042 which was coming from front side (from Modi Nagar Side) at a very high speed and in most rash and negligent manner, and hit the said Tractor trolley due to the forceful impact, the deponent sustained grievous injuries on his right leg and other parts of body, Helper Mahesh also sustained grievous injuries on his both hands.”



2024 : DHC : 2029



7. A bare reading of the aforesaid deposition would show that when the tyre of the tractor got busted, the driver of the tractor trolley lost its control and collided with the divider and due to the forceful impact, the divider collapsed and the tractor trolley came on to the wrong side of the track/road when suddenly, the offending truck came from the opposite side and hit the tractor trolley. It is pertinent to mention here that the affidavit of PW-1 is dated 10.07.2014 and he was examined-in-chief on 11.07.2014 and his cross-examination was recorded on 05.02.2016, in which he did a somersault and sang an altogether different tune. The relevant extract of the cross-examination is as under:

“.....It is wrong to suggest that because truck was not at fault therefore police had not taken any step against driver. It is wrong to suggest that later on with the connivance of the police and owner I have involved the truck falsely for claim purpose. It is highway and busy road. It is correct that the both truck and tractor was their own side. It is correct that the tractor tyre was not punctured then accident could not take place. The accident took place because of tractor tyre was punctured. All the occupant of the tractor trolley including driver sustained injuries. I was fully conscious at the time of accident. The Tehrir was read and signed by me but not written by me. It is correct that I was not lodged any complaint against tractor trolley. It is wrong to suggest that I have sustained injuries because of negligence of tractor trolley driver. It is wrong to suggest that I have involved the truck for claim purpose because I cannot get the claim from tractor. I do not remember which part of truck hit to tractor trolley. At the time of accident, I was standing near the tractor and truck directly hit me. The truck was near about 70-80 speed. The truck was ten tyre truck. I was standing near the divider approximately 1 foot when truck hit me. The truck hit me first and thereafter tractor. The left of the tractor was hit by the truck. Police immediately interrogate me after the accident.....”

{underlined portions emphasised}



2024:DHC:2029



8. It is but manifest that PW-1, in order to fasten the responsibility of the accident, made a considerable improvement, contrary to his version of the accident in his affidavit and, testified in his cross-examination that he was not travelling in the tractor trolley but, was rather standing in the middle of the divider approximately one foot away when the offending truck hit him. The plea of the learned counsel for the appellant that initially, the offending tractor trolley had hit the divider and went over to the other side and the occupants/passengers on the tractor trolley came down, and then the truck came from the opposite side, driven rashly and negligently and hit the tractor trolley, is not substantiated by the evidence led on the record.

9. In view of the foregoing reasons, I find that the learned Tribunal has neither committed any illegality, perversity nor adopted any incorrect approach in law in dismissing the claim.

10. The appeal is accordingly dismissed.

DHARMESH SHARMA, J.

MARCH 14, 2024

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