

HIGH COURT OF DELHI**Bench: Hon'ble Mr. Justice Dharmesh Sharma****Date of Decision: 2nd May 2024**

MAC.APP. 311/2019

BABY YOGITA ARORA ...APPELLANT**VERSUS****NEERAJ KUMAR VISHWAKARMA & ANR ...RESPONDENTS****Legislation:**

Section 173, 166, 140 of the Motor Vehicles Act, 1988

Sections 279, 337 of IPC

Section 161, 133 of the Cr.P.C.

Subject: Appeal against the dismissal of a motor accident claim on the grounds of failure to prove the involvement of the alleged offending vehicle in the accident.

Headnotes:

Motor Accident Claim – Appeal against dismissal of claim for compensation – Appellant challenged the Tribunal's finding that failed to prove involvement of the alleged offending vehicle in the accident – Evidence primarily relied upon the statement of one Sanjay, who noted the vehicle's number days after the accident but was not examined in court – Tribunal criticized for lack of substantial evidence linking the vehicle and the accident – Appeal dismissed due to insufficient proof of the vehicle's involvement and questionable integrity of the investigation. [Paras 1-10]

Tribunal found no sufficient evidence linking the offending motorcycle to the accident – Observations on investigating officer's inadequate inquiry and failure to verify critical details about the eye-witness and the accident scene – Tribunal noted failure of the appellant to present her father or the key eyewitness in court, and inconsistencies in respondent's accounts not pursued in investigation – High Court found no error in Tribunal's judgment and dismissed the appeal. Appeal Dismissed. [Paras 5, 9, 10, 16]

Referred Cases:

None mentioned in the judgment.

Representing Advocates:

Mr. Ved Vyas Tripathi for the Appellant.

Mr. Jabbar Hussain for the Respondents.

J U D G M E N T

1. This judgment shall decide an appeal preferred by the appellant/claimant in terms of Section 173 of the Motor Vehicles Act, 1988¹, as amended up-to-date, assailing the impugned judgment-cumaward dated 13.09.2018², passed by the learned Presiding Officer, Motor Accident Claims Tribunal-1, North, Rohini, Delhi³, in MACT No. 4510/16⁴, whereby her claim petition was dismissed primarily on the ground that she had failed to prove the involvement of the offending vehicle in question.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the case of the appellant is that she was hit by the offending motorcycle bearing No. DL8SND-4202 which was being driven by respondent No.1 on 06.03.2013 at about 5.30 p.m. near Satguru Dham Mandir, Mukherjee Nagar, Delhi, resulting in grievous injuries upon her body. She filed a claim petition under Section 166 read with Section 140 of the MV Act. The offending motorcycle was not insured for third party risks and both the respondent No.1/driver and respondent No.2/registered owner contested the claim petition and denied the involvement of the offending vehicle in question, claiming that they have been falsely implicated.

3. Learned tribunal, based on the pleadings of the parties, framed the following issues:

“(1) Whether the petitioner is entitled to compensation, as prayed for?
(2) Relief.”

4. In order to prove her case, the petitioner examined herself as PW1 and thereafter, she closed her evidence. On the other hand, respondent No.1/driver came in the witness box and was examined as R1W1 whereas respondent No.2/registered owner was examined as R2W2. However,

¹ MV Act

² Impugned Judgement

³ Tribunal

⁴ Claim Petition

learned Tribunal also thought it fit to examine the Investigating Officer⁵ of the case and accordingly S.I. Subhash Chandra was summoned and examined as PW2.

5. The learned Tribunal eventually found that the appellant has not been able to prove the involvement of the offending motorcycle in the accident, and accordingly her claim petition was dismissed.

ANALYSIS AND DECISION:

6. Having heard the learned counsels for the rival parties and on perusal of relevant records of the case, including the digitized Trial Court record, first things first, it would be apposite to refer to the findings recorded by the learned trial court on issue No.1 which read as under:

“7. Prior to coming to the aspect of entitlement, the petitioner has to prove first that the accident due to which she sustained injuries has been caused due to rash and negligent driving of the respondent no.1. Even to prove the rash and negligent driving by respondent no.1, she has to prove first that the offending vehicle was involved in the accident. To prove all these facts petitioner examined herself as PW1 and in her affidavit (Ex.PW1/A), she reiterated the facts of her claim petition.

8. The evidence of PW2 is quite material. PW2 SI Subhash Chandra deposed that on 06.03.2013, he was posted as SI at PS Mukherjee Nagar and on that day he was on emergency duty from 08:00 am to 08:00 pm and at about 08:00 pm, he received DD no.83B which was prepared on the information received from Sant Parmanand Hospital regarding, the admission of one Yogita D/o Mr. Suresh R/o Mukherjee Nagar, Delhi in an accident case. He deposed that he went to said hospital and collected MLC of injured Yogita and she was under treatment in ICU of the hospital. He deposed that no eye-witness was found in the hospital and the place of accident was not clear but it was somewhere in Mukherjee Nagar and he has got the FIR registered on the basis of DD no.83B and investigated the case. He deposed that during investigation, he has deposed MLC of injured for opinion which came to be as 'grievous' and on 14.03.2013, father of injured Mr.Suresh Kumar came to PS Mukherjee Nagar and told him that he has met with one Sanjay S/o Haber who had seen the vehicle involved in the accident and who has also noted down the registration number of the offending vehicle. IO further deposed that he recorded the statement of father of injured Mr. Suresh Kumar in this regard and on 23.03.2013, he met with injured Yogita at her residence and on her instance he prepared site plan and recorded her statement under Section 161 Cr. PC but she was not sure about the driver of offending vehicle and make of the vehicle. He deposed that on 24.03.2013 Mr. Sanjay S/o Achhabar R/o Gali no. 3, Jagatpur

Village, Delhi came at PS along with the father of injured for his statement and accordingly he (IO) recorded his (Sanjay's) statement under Section 161 Cr. PC in which he disclosed the number of offending motorcycle as DL-4SND-4202. He deposed that on 31.03.2013 a notice under Section 133 of Motor Vehicles Act Ex.PW2/I was served upon the registered owner of offending motorcycle i.e. Mr. Ravi Ahuja and in pursuance of that notice he (Ravi Ahuja) had

⁵ I.O.

produced driver Neeraj Kumar (respondent no.1) along' with offending motorcycle in PS on 03.04.2013. He further deposed that the registered owner gave written reply to the notice under Section 133 of Motor Vehicles Act and told that Mr. Neeraj Kumar was driving the offending motorcycle (Appache) on 06.03.2013 at 05:00 pm and he then arrested the driver (respondent no.1) of offending vehicle and seized original RC of offending vehicle, driving licence of driver/accused Neeraj Kumar and also seized the offending vehicle. He further deposed that the vehicle was without insurance and on 27.04.2013, he has collected original medical bills and discharge summary of injured Yogita from her father and also filed kalandra under Section 146/196 of Motor Vehicles Act against the registered owner of offending vehicle i.e. Mr. Ravi Ahuja.

9. Respondent no.1 examined himself as R1W1 and in his affidavit Ex.R1W1/A, he reiterated the facts of his written statement. He deposed that he has been falsely implicated in the present case on the basis of some false information given by some interested person and he never caused any accident and the accident might have been caused by some other vehicle. He further deposed that the FIR no.83/13 under Sections 279/337 of IPC PS Mukherjee Nagar, Delhi does not contain his name or the motorcycle number which was alleged to have been driven by him and he has nothing to do with the alleged accident.

10. Respondent no.2 examined himself as R2W1 and in his affidavit EX.R2W1/A, he reiterated the facts of his written statement. He deposed that he is the owner of vehicle no.DL8SND-4202 but the said vehicle was not being driven by respondent no.1 at the time of accident and the said vehicle has been falsely involved in the present case. He deposed that respondent no.1 was his employee but he was not driving the said vehicle on 06.03.2013 at about 05:30 pm at Satguru Dham and the case has falsely been registered against the respondent no.1 on the false complaint of some interested person.

11. The main contention of counsel for respondents no.1 and 2 is in terms of their written statement that their vehicle was not involved in the accident at all and their vehicle has been falsely implicated in this accident. In cross-examination of respondent no.1 by counsel for petitioner, he (respondent no.1) deposed that he was arrested by police in this case and his driving licence was also seized by the police and he did not lodge any complaint against the IO/SHO for his false implication.

12. PW2 SI Subhash Chandra is IO and during his examination he deposed that no eye-witness was found in the hospital and he has registered the case on the basis of DD no.83B and investigation was taken by him and on 14.03.2013 father of injured Mr. Suresh Kumar came to PS Mukherjee Nagar and told that he met with one Sanjay S/o Haber who had seen the vehicle involved in the accident and also noted down its registration number of the offending vehicle and on 24.03.2013. Mr. Sanjay S/o Mr. Achhabar R/o Gali no.3, Jagatpur Village, Delhi came to PS alongwith the father of injured for recording of his statement and he has recorded the statement of Mr. Sanjay under Section 161 of Cr. P. C. in which he disclosed the registration number of the offending vehicle as DL-4SND-4202.

13. In the cross-examination he deposed that when he inquired as to why he has come to make statement at such a later stage, he stated that he was busy in preparation of UPSC examination and that is why he could not come to give his statement about the accident. He further deposed that he had not shown the offending motorcycle to the injured to ascertain its involvement in this accident nor shown to the same to above said Sanjay. He deposed that he had not asked for any document from the said Sanjay to the effect that he was student or that

he was preparing for UPSC examination and he had also riot asked for any document regarding his residence mentioned by him in his statement recorded under Section 161 Cr. PC. He deposed that Mr. Sanjay did not produce any document regarding his residence and he has also not verified the address of said Mr. Sanjay. He does not know whether said Mr. Sanjay is known to the father of injured or not. He had not inquired about whereabouts, his residence, his working place and his earning etc. in this matter before citing him as a witness. He further deposed as correct that he had recorded the statement of Sanjay at the instance of father of injured and the offending vehicle was seized after 28 days of alleged accident. He further deposed that apart from recording statement of Mr.Sanjay, he did not conduct any other proceedings in his presence and he inquired about place of occurrence from Sanjay but spot of accident was not got verified by Sanjay.

14.As far as facts with respect to the owner of registered vehicle is concerned, he (IO) admitted that petitioner and Ravi Ahuja are resident of same locality. He did not show the offending vehicle to Sanjay and tried to give explanation that since the number of offending motorcycle was specific, the said motorcycle was not shown to Mr. Sanjay as well as injured. When a suggestion was given to the IO that Mr. Sanjay is a fictitious person then he instead of denying this fact specifically to that effect, he replied that "I do not know whether said Sanjay is fictitious person produced by father of injured". Such answer from the IO apparently shows that how casual, unusual, unprofessional the IO was in conducting the investigation that too without following the procedural aspects with respect to conducting investigation as prescribed in the Code of Criminal Procedure. Since the IO, as he himself is not sure with respect to identity of Mr. Sanjay, his evidence cannot be appreciated. In the opinion of the court, such reply can be given by the IO only if he has not seen Sanjay at all, otherwise since he has seen Sanjay as deposed and has recorded his statement, then his simple answer would have been to deny such suggestion but instead of denying the suggestion he pleaded ignorance with respect identity of Sanjay. If the IO himself is ignorant with respect to the identity of the eye-witness then how the guilt/offence of the accused would be proved before Ld. Metropolitan Magistrate, beyond reasonable doubt and how his investigation would be appreciated while adjudicating the matter by this court. Further, he admitted that he had not inquired from the nearby locals / residence with respect to the involvement of the vehicle qua this accident and apart from recording of statement of Mr. Sanjay he did not conduct any proceedings in this matter in his presence. Mr. Ravi Ahuja, respondent no.2 on the basis of which respondent no.1 has been implicated made a statement to the police with respect to the fact that on the date of accident Mr. Neeraj was driving the vehicle but when R2W1 entered the witness box by filing his evidence by way of affidavit, he denied each and every fact and there is no cross examination with respect to his reply under Section 133 of Motor Vehicles Act. Rather he stated that he was called in the police station after one month and his signatures were taken on some blank papers. From all these facts and particularly the way in which IO has conducted the inquiry, the petitioner has failed to prove that the offending vehicle was involved in the accident.

15.The onus to prove that the offending vehicle was involved in the accident was upon the petitioner. Petitioner himself has not examined any other witness, not even her father. Spot of accident has not been identified by the petitioner nor the IO has got it verified from the said Sanjay. The said Sanjay has not been examined by the petitioner. The way, in which investigation has been conducted by the IO is pathetic

and beyond the well established norms of investigation. It cannot be appreciated that how an officer of the rank of Sub-Inspector be so casual in an accident matter. However in any case, the petitioner has not been able to prove the involvement of the offending vehicle in the accident and accordingly rash and negligent driving cannot be attributed upon respondent no.1.

16. For the reasons mentioned above, this issue is decided against the petitioner and in favour of respondents by holding that petitioner has not been able to prove that she suffered injury on 06.03.2013 on account of driving of vehicle no. DL-8SND-4202 by respondent no.1 and she is not entitled for any compensation.”

7. A careful perusal of the aforesaid reasons accorded by the learned Tribunal would show that it is quite evident that appellant sustained injuries as a result of a motor accident. However, neither the make nor the registration number of the offending vehicle was disclosed to the IO/PW2, nor the same got recorded while registering the FIR No.83/13 at PS Mukherjee Nagar, Delhi. The appellant/petitioner No.1 admitted that she was not able to note down the make and registration number of the offending vehicle and it was her father Sh. Suresh Kumar, who was approached by one Sanjay S/o Haber, who disclosed the make and registration number of the offending vehicle after 10 days of the accident on 24.03.2013, on which date statement of Sanjay and her father Suresh Kumar were recorded by the I.O. under Section 161 of the Cr.P.C⁶. It appears that evidently, a notice under Section 133 of the MV Act (Ex.PW2/1) dated 31.03.2013 was issued to respondent No.2/registered owner who in his reply acknowledged that at the time of accident, the motorcycle was being driven by his employee/respondent No.1. It also appears that respondent No.2, in the seizure memo of the motorcycle (Ex.R2W1/DA) also acknowledged that respondent No.1/ Neeraj was driving the motor vehicle on the date of accident and admitted his signatures. However, he also clarified that the I.O. had taken his signatures on blank papers which were later on manipulated and they hotly contested the claim of the appellant/claimant-injured.

8. This Court can understand that in hit and run cases, it is very difficult for the victim to remember the make and/or registration number of the vehicle and there may be passers bys/public persons who may note down the make and/or registration number of the vehicle but, it was a stark case where the appellant/petitioner chose not to summon or examine her father and even the so-called public witness Sanjay S/o Haber. There is no escape from the conclusion arrived at by the learned Tribunal that the I.O. failed to inquire into

⁶ Code of Criminal Procedure, 1973

the relationship between the family of the appellant/claimant-injured as also the alleged eye- witness Sanjay S/o Haber. Further, a suggestion was given to the I.O. that the respondent No.2, who was incidentally residing in the same locality, was falsely implicated since he had a dispute with the father of the appellant/claimant-injured, however the same was not investigated.

9. The learned Tribunal has very rightly commented upon the demeanour of the I.O. SI Subhash Chandra who failed in his duties to check the antecedents of Sanjay S/o Haber and the investigation conducted by him was absolutely lackadaisical, incompetent and bereft of any purpose in law.

10. In view of the aforesaid discussion, it is difficult to discern that the learned Tribunal has committed any grave illegality or perversity in appreciating the evidence on the record and recording the finding that the appellant/claimant-injured has failed to prove the involvement of the offending vehicle in the accident. Hence the present appeal is devoid of any merits and the same is hereby dismissed. Pending application, if any, also stands disposed of.

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