

**(2011) 12 DEL CK 0153**

**Delhi High Court**

**Case No:** FAO No. 587 of 2002

Bhola Ram Sharma and Another

APPELLANT

Vs

Hari Ram Oil Co. ETC.

RESPONDENT

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**Date of Decision:** Dec. 8, 2011

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166
- Penal Code, 1860 (IPC) - Section 279, 304A, 337

**Hon'ble Judges:** G.P. Mittal, J

**Bench:** Single Bench

**Advocate:** Y.P. Laroya, for the Appellant; J.P.N. Shahi, Advocate for respondent No. 2 insurance company, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

G. P. Mittal, J.

The Appellants who are the parents of deceased Raj Kumar impugn the award dated 02.07.2002 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby the claim petition preferred by the Appellants was dismissed on the ground that involvement of tanker No. DLG-7790 in the accident resulting into Raj Kumar's death was not established.

2. On 22.02.1991, one Subhash Chand was travelling on a two wheeler scooter No. DBO-4385. His fiancée and would be brother-in-law (the deceased) were sitting on the pillion seat. When they reached near ESI Hospital, Raja Garden Chowk, a petrol tanker No. DLG-7790, being driven in a rash and negligent manner by the driver, came from behind and struck the scooter as a result of which all of them fell down on the road. Injuries sustained by Raj Kumar proved to be fatal and he was declared dead in the ESI Hospital where he was removed by the PCR van.

3. In the inquiry before the Tribunal, the Appellants examined one Mukul Kumar Sharma as PW3. He deposed that on 22.02.1991, he was proceeding to the marble

market at Raja Garden on his two wheeler scooter. At about 9:30 pm, when he reached Raja Garden flyover, his scooter got punctured. The stepney was also punctured and, therefore, he wanted to take a lift from somebody. He saw a two-wheeler on which a woman and the deceased were sitting on the pillion seat. A tanker DLH-7790 came from behind and hit the scooterist. He deposed that the male pillion rider was crushed under the wheels of the truck. He noted the number of the tanker and informed the PCR van standing nearby. The PCR van removed the injured to ESI Hospital. PCR staff asked him to wait at the spot till the arrival of the local police. The local police arrived at the spot and recorded his statement.

4. During the pendency of the Appeal, an application for additional evidence moved by the Appellants was allowed. The Appellants filed an affidavit of PW3 Mukul Sharma who was examined during the inquiry before the Tribunal and affidavit of Subhash Chand who was driving scooter No. DBO-4385, by way of additional evidence. These witnesses were also cross-examined.

5. It is important to note that the accident case (i.e. FIR No. 179 dated 22.02.1991 u/s 279/337/304-A IPC) was filed as untraced on 22.03.1991, meaning thereby that the offending vehicle could not be traced by the police. It is very strange that the Appellants did not prefer to examine their own son-in-law Subhash Chand either during the investigation of FIR No. 179 or during inquiry before the Tribunal though he was driving the scooter No. DBO-4385 which met with the accident. PW3 Mukul Kumar Sharma examined before the Tribunal although gave the number of offending tanker as DLH 7790 instead of DLG-7790 (which belonged to respondent No. 1). I would not attach much importance to this slip in mentioning the number of the tanker. It is very important to note that the witness was categorical that he was waiting for somebody to give him a lift as his scooter got punctured on the flyover of Raja Garden on the date of accident i.e. 22.02.1991. The Tribunal observed that Mukul Kumar Sharma was a planted witness on the ground that Raja Garden flyover was not even built on the date of accident i.e. 22.02.1991. It is, therefore, apparent that PW3 came out with a made-up story at Appellants' behest just to enable them to get the compensation in a hit and run case. It is not understandable that instead of producing their own son-in-law who was driving the two-wheeler scooter involved in the accident they would produce a bystander i.e. PW3 Mukul Kumar Sharma. It is not even known as to how the appellants got PW3 Mukul Kumar Sharma. As stated earlier, the criminal case regarding the accident were sent untraced. It is not believable that if the Appellants were really aware of the registration number of the offending vehicle, they would not have pursued the criminal case relating to the death of their son. In fact, PW Subhash Chand, who was examined for the first time only in the High Court by way of filing his affidavit in the year 2009 would have pursued the criminal case as well as the claim petition being brother-in-law of the deceased and son-in-law of the claimants/Appellants.

6. The respondent No. 1's vehicle DLG-7790 was fully insured and, therefore, there was liability of the insurance company to pay the compensation if the same would have been awarded by the Tribunal. The Respondent No. 1 still made sure to produce the driver of the tanker as R1W1 who deposed that the tanker No. DLG-7790 did not meet with any accident on 22.02.2011. In cross-examination of R1W1, the Appellants tried to set up a different case and suggested that in fact Hari Ram, the owner of respondent No. 1 M/s Hari Ram Oil Company, was driving the tanker at the time of the accident. R1W1 was categorical that his employer did not even know how to control and operate the steering of a tanker. He testified that Shri Hari Ram had since expired and he would have been 80 years if he would have been alive at that time.

7. It is true that the standard of proof of negligence in a claim petition u/s 166 of Motor Vehicles Act is much less than in a criminal case, yet, the claimants are under obligation to prove the involvement of the vehicle and some negligence on its part to make them liable in tort to pay the compensation. To my mind, the Tribunal rightly held that the involvement of the tanker No. DLG-7790 was not established and thus dismissed the claim petition. The Tribunal's order to the effect that tanker No. DLG-7790 was not involved is well-reasoned and justified. In the additional evidence produced before this Court, the credibility of PW3 Mukul Sharma remained questionable. In fact, he tried to cover up the flyover of Raja Garden with a bridge on the pulia. It is apparent that PW Subhash Chand whose affidavit was filed in the High Court did not depose before the Tribunal as he did not know the registration number of the tanker.

8. I do not find any ground to interfere in the impugned award. The Appeal is devoid of any merit. The same is accordingly dismissed.