
(2012) 09 DEL CK 0545
Delhi High Court
Case No: MAC App. 213 of 2007

Sazid Ali and Others

APPELLANT

Vs

Suleman and Others

RESPONDENT

Date of Decision: Sept. 3, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173

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

Bench: Single Bench

Advocate: Deepak Tyagi, with Mr. K.K. Gautam, for the Appellant; Pankaj Seth, for R-3., for the Respondent

Final Decision: Disposed Off

Judgement

G. P. Mittal, J.

These three Appeals arise out of a common judgment dated 03.10.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while deciding the issue of negligence, the Claims Tribunal held that the accident was caused on account of contributory negligence of the milk tanker No. DL-1GA-5548 driven by the First Respondent and of deceased Shakur Ahmed, who was driver of the Maruti car No. DL-7C-0001. Shakur Ahmed and two more occupants of the car suffered fatal injuries whereas two other escaped with minor injuries. The Claims Tribunal apportioned the contributory negligence to be 70:30 vis-à-vis the deceased Shakur Ahmed and Suleman, the First Respondent.

2. Since common question of law and fact is involved in all the three Appeals, the same are taken together for disposal.

3. The following contentions are raised on behalf of the Appellant:-

(i) The Claims Tribunal erred in holding that there was contributory negligence on the part of deceased Shakur Ahmed. There was overwhelming evidence in the shape

of PWs 3,4 and 5 that the tanker driver (Respondent No. 1) was solely responsible for causing the accident by rash and negligent driving of tanker No. DL-1GA-5548. It is urged that the reliance placed on [Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others](#), is misplaced.

(ii) Even if, it is assumed that there was negligence on the part of deceased Shakur Ahmed as well, it would be a case of composite negligence as far as MAC APP.213/2007 and MAC APP.227/2007 are concerned as deceased Noor Jahan Begum and Rashida Begum did not contribute to the accident.

NEGLIGENCE:-

4. The Claims Tribunal while dealing with the issue of negligence held as under:-

PW 1 Sajid Ali is only a hear say witness and he did not witness the accident. PW 2 is also not an eye witness. PW 3 Allah Mehar had furnished his affidavit, who stated that he is a truck driver by profession and on 07.08.1995, around 12.30 in the noon he was proceeding near the accident spot driving his vehicle HR-46-5453. Ahead of him the tanker (offending vehicle) in a high speed and negligence had dashed against one Maruti car coming from the opposite direction. He got down from his vehicle and noted the Maruti car number. He also found that the driver of the car and the lady sitting next to him died on the spot and the condition of the woman who was sitting on the back seat was also serious. The accident occurred due to the negligence on the part of the tanker driver and a crowd collected there. The tanker driver fled from the scene. In the cross examination by respondent No. 1 & 2 it is elicited that the police had recorded the statement of PW 3 after several months of the accident. He did not remove the injured to the hospital. He denies a suggestion that he did not see the accident. He admits that he came with one of the claimants. In the evidence of PW 4 Raj Pal Singh it is found that on 07.08.1995 he was going to Mujjafar Nagar for repairing his tractor; He further stated that it was drizzling on that day and at about 12-12.30 noon when he reached at U.P. Steel factory Begraj Pur, near Mansoor Pur a Maruti, a Tanker coming from the opposite side in a rash and negligent manner hit the Maruti car. After parking his tractor, to a side, he went near the spot. He found that a lady and gent sitting in front seat were found dead and the lady sitting in the back seat also sustained grievous injuries. After seeing the crowd the Tanker"s driver fled away from the spot. In the cross examination he admits that his statement was recorded by the police after 4-5 months of the accident. He denied the suggestion that the accident did not occur in his presence. PW 5 Dilshad Rana deposed through his affidavit that on 07.08.1995 he was going to Khatoli on his scooter and when he was to reach near UP Steel factor, a Milk Tanker over took his vehicle in a rash and negligent manner without blowing any horn and hit a Maruti car which was coming from the opposite side. He saw that the lady and gent sitting in front seat were dead and the lady sitting in the back seat also sustained grievous injuries. In the cross examination he admits that he did not tell

these facts to the police. He further admits that he met with the police on that day but police did not record his statement. He further admits that after 4-5 months police recorded his statement.

The evidence of PW 6, 7 & 8 are of no use to decide issues No. 1. Per contra R1W1 the driver of vehicle No. 5548 Tanker deposed that he was arrested around eight years ago in 1996. The police stopped his vehicle and was taken to Mansoor Pur Police station. He further deposed that no accident occurred and was implicated in a false criminal case. In the cross examination by the petitioner it is elicited that this witness was unable to say whether he drove the tanker on 07.08.1995. He denied a suggestion that he had caused the accident. It is further admitted by him that he was in custody for seven days and admits that the tanker was seized by the police and he was released on bail. The petitioners have produced the Ex. P-1 FIR and Ex. P-2 the charge sheet. The accused in the criminal case is respondent No. 1 herein. The FIR is recorded at the instance of one Shafiq Tyagi. The contents of the FIR show that eye witness Shafiq Tyagi did not notice the number of the offending vehicle. He is the first informant. The information was given about 12.30 in the noon. He is not examined in this case. The so called eye witnesses who are examined in this case have filed their examination in chief by way of affidavits all are in a stereo type manner. It is also found in their cross examination that their statements were recorded by the police after a gap of 4-5 months. It is very strange that none of these witnesses have volunteered to complain to the police immediately after the accident. However, considering that these witnesses are also the charge sheet witnesses and further considering that cross examination of these witnesses wherein it was drawn in reply that they saw the truck behind the Milk tanker and that the Milk tanker remained at the spot for 10-12 minutes as found in the cross examination of PW 4 and that PW 3 having stated in the cross examination, having denied that he did not see the accident, this Tribunal can only look at the preponderance and probabilities of the case. It is also pertinent that R1W1 was arrested in this case. These factors would out weigh the say of R1W1 who had denied the accident since he had not taken any measures of protest against his false implication. Hence, I hold that the offending vehicle was involved in the accident

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It is to be noted that there was a head on collision. In the matters of head on collision a presumption would always arise with regard to the contributory negligence of both the vehicles involved. This prudent observation is recognised in the ruling of Hon'ble supreme Court in [Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others](#), . The sketch / site plan shows that the course of the Maruti Van was from South to North. The course of the Tanker is from North to South. Considering point A which is towards extreme east, it can be easily gathered that the Maruti car which was going in the direction from South to North had transgressed the middle of the road and dashed against the Tanker. In the result the very site plan produced at Ex.

P-3 by the petitioners evidently and amply establishes the negligence on the part of the car driver. Ex. P-3 is dated 07.08.1995. This is the document relied by the petitioners themselves. No prudent driver of a car would go to the extreme side of the flow of opposite traffic. Hence, the negligence on the part of the car driver is manifestly established by this document. But at the same time, it is to be noted that only if the Tanker driver had observed the car, he would have swerved to the edge of the road on his side, to have avoided the accident. Considering the site plan which is prepared on the date of accident itself, I find the car driver has taken a course negligently deviating from the course open to the traffic from South to North to have a head on collision with the traffic coming from North to South. The site plan shows no deviation on the part of the truck driver. Therefore, the blameworthiness on the part of the car driver almost clear to the extent of 70%/. Yet 30% negligence can be attributed to the respondent No. 1, since the Tanker is a heavy vehicle which should have been more cautious. A mutual duty is fastened on the driver's in the opposite direction. Though it was open for the respondents to have established no negligence on their part, the respondent No. 1 & 2 having totally denied the accident and from considering the oral testimony available on record, the part negligence can be imputed to the driver of the tanker since the driver in his deposition had not stated that he had taken any steps to avert the accident. I have already discussed the blameworthiness on the part of the car driver at 70% to be the cause of this accident.

5. All the three eye witnesses (PWs 3,4 and 5) deposed that tanker No. DL-1GA-5548 was being driven in a rash and negligent manner. PW-3 Allah Mehar testified that after the accident, the driver of the tanker fled from the spot. In cross-examination, the witness deposed that his statement was recorded by the police during investigation of the case. He stated that he stopped his truck at a distance of 150-200 mts. behind the milk tanker. He denied the suggestion that he did not see the accident taking place.

6. Similarly, PW-4 Raj Pal Singh corroborated PW-3 Allah Mehar in his examination-in-chief. In cross-examination, the witness deposed that his statement was recorded by the police 4-5 months after the accident. He deposed that driver of the milk tanker overtook a two wheeler scooter and struck against the Maruti Car coming from the opposite direction.

7. PW-5 Dilshad Rana, another eye witness of the accident, was riding on his two wheeler. He deposed that his two wheeler was overtaken by a tanker No. DL-1GA-5548. He deposed that after overtaking him, the tanker which was being driven in a rash and negligence manner collided against the Maruti Car coming from the opposite direction.

8. Thus, all the three witnesses stated in unison that the accident was caused on account of rash and negligent driving of the tanker driver (the First Respondent). The Claims Tribunal primarily held the deceased Shakur Ahmed to have contributed

to the accident on the basis of the certified copy of the site plan Ex.P-3. In the said site plan, the Maruti car was found lying at Point A which was a little on the right side of the middle of the road. The Claims Tribunal opined that the driver of the Maruti car travelled into the portion of the road meant for the vehicle coming from the opposite direction and was therefore negligent in causing the accident to the extent of 70%. The Claims Tribunal lost sight of the fact that the site plan Ex.P-3 was not prepared on the statement of any of the eye witnesses. It was prepared by the IO of his own observations. The site plan merely depicted the position of the Maruti car No. DL-7C-0001 after the accident. Thus, simply from the position of the car at Point A after the accident, it cannot be said that the Maruti car had gone to the right portion of the road to cause the accident.

9. PWs 3,4, and 5 were eye witnesses of the accident as was established from the report u/s 173 Cr.P.C. filed by the police in the Court in respect of this accident.

10. The case of the first Respondent throughout had been that his tanker was not involved in the accident. Thus, he did not state a word as to how the accident occurred. On appreciation of evidence, the Claims Tribunal found that the involvement of the tanker was established in the accident. The first Respondent fled with the tanker after the accident. He refused to participate in the TIP. Thus, the Claims Tribunal opined that the involvement of tanker No. DL-1GA-5548 which was driven by the first Respondent at the time of the accident was established.

11. From the testimony of the three eye witnesses (PWs 3,4 and 5) coupled with the first Respondent's conduct, in fleeing from the spot and his refusal to take part in the TIP, it is proved that the accident was caused on account of rash and negligent driving of the tanker by him. The reliance on Bijoy Kumar Duggar was misplaced. Every case of head on collision would not necessarily mean contributory negligence on the part of the drivers of both the vehicles coming from the opposite direction. In this case evidence came that the tanker was being driven in a rash and negligent manner. The tanker driver overtook a two wheeler and thereafter collided with the Maruti car. Culpable negligence on the part of First Respondent in driving the tanker No. DL-1GA-5548 is sufficiently established.

12. As far as MA APP. 213/2007 and 227/2007 are concerned the deceased Noor Jahan Begum and Rashida Begum did not contribute to the negligence. Even if, I would have taken the view that there was some negligence on the part of the driver of Maruti car, namely, Shakur Ahmed both the tortfeasors were jointly and severely liable to pay the compensation.

13. In view of the foregoing discussion, the impugned judgment contributing negligence to the extent of 70% on the part of Shakur Ahmed, driver of the Maruti Car No. DL-7C-001 is set aside. It is held that the accident was caused solely on account of rash and negligent driving of tanker No. DL-1GA-5548 by the first Respondent.

14. Respondent No. 2 Ashok Kumar Batra being owner of the tanker is vicariously liable for the act of the First Respondent. United India Insurance Company Limited, Respondent No. 3, being insurer of the offending vehicle is under obligation to indemnify the insured.

15. The balance compensation along with interest @ 7.5% per annum from the date of filing of the Petition shall be deposited by the Respondent No. 3 in UCO Bank, Delhi High Court, New Delhi within six weeks.

16. Twenty percent of the compensation awarded shall be payable to each of the Appellants No. 1,2,4 and 5 and rest 20% shall be payable to Appellant No. 2. in MAC APP.213/2007 (for the death of Noor Jahan Begum).

17. Fifteen percent of the compensation awarded shall be payable to each of the Appellants No. 2 to 6, children of the deceased Shakur Ahmed and rest 25% shall be payable to Appellant No. 1, mother of the deceased in MAC APP.224/2007.

18. Twenty percent of the compensation awarded shall be payable to each of the Appellants No. 1 to 5, children of the deceased Rashida Begum in equal proportion, in MAC APP.227/2007.

19. The Appeals are disposed of in above terms. Pending Applications also stand disposed of.