

Kishore Kumar vs.naresh Kumar & Ors

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SooperKanoon Citation : sooperkanoon.com/1225664

Court : Delhi

Decided On : Sep-26-2019

Appellant : Kishore Kumar

Respondent : Naresh Kumar & Ors

Advocate for Pet/Ap. : Mr. Partap Singh

Judgement :

\$~9 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

26. 09.2019 MAC.APP. 675/2014 Through: Mr. Partap Singh, Adv. Appellant KISHORE KUMAR versus CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI NARESH KUMAR & ORS

... RESPONDENTS

Through: Ms Neerja Sachdeva, Adv. for R-3. NAJMI WAZIRI, J (Oral) This appeal impugns the award of compensation dated 26.02.2014 1. passed in MACT No.41/2013 on the ground that contributory negligence of 50% has been apportioned upon the victim-appellant. It is the appellants case that the impugned order itself notes that the offending vehicle had suddenly moved from one lane to the other and there was hardly any time for the injured motor-cyclist to apply the brakes of his vehicle and/or recover from the sudden appearance of the offending vehicle in his lane; that despite his best efforts he could not stop his vehicle from crashing into the offending vehicle. The appellant refers to the statement of the

injured and the cross-examination which reads as under: ... I have filed my evidence by way of affidavit which is Ex. PW1/A and it bears my signatures at point A and B. My treatment record is Ex. PW

collectively. Receipts for purchase of medicines and for payments to the doctors MAC.APP. 675/2014 Page 1 of 4 including final bill of Ayushman Hospital is Ex. PW

collectively. My Voter Card is Ex. PW

(OSR) and my DL is Ex. PW

(OSR). xxx by Counsel for R- 1 and R-2. Nil. Opportunity given. xxx by Shri Shyam Singh, Advocate, Counsel for the Insurance Company. Myself and friend Mohd. Mumtaz Alam are friends. He is residing nearby my house. At the time of accident, both of were driving out motorcycle simultaneously. Both the motorcycles driven by us are in our own names. I have R.C. of my motorcycle with me. It was purchased in January, 2013. We were going to our house at the time of accident. Report to the police was made by Mohd. Mumtaz Alam. My motorcycle was in front and motorcycle of Mohd. Mumtaz Alam was behind me. The offending vehicle had overtaken my motorcycle. He had overtaken my motorcycle and thereafter, immediately applied brakes when it was in front of me. It is wrong to suggest that the offending vehicle was going next to my motorcycle even before the accident or he had not overtaken my motorcycle. It is wrong to suggest that the offending vehicle was stationary on the road. It is wrong to suggest that red cloth was tied on the steel rods on the offending vehicle. It is wrong to suggest that the driver of offending vehicle was not in the offending vehicle. Vol. He had came to me after getting down from the Tempo. It is wrong to suggest that the driver was far away from the offending vehicle and had gone to find out the address where he had to supply the iron rods at Najafgarh. It is wrong to suggest that when I hit his vehicle from behind then he had come to find out what had happened. It is wrong to suggest that I was driving at a fast speed. Vol. I never drive fast. It is wrong to suggest that the accident is due to my negligence. It is wrong to suggest that I was not earning Rs. 15,000/- per month at the time of accident. It is wrong to suggest that I had not engaged any attendant MAC.APP. 675/2014 Page 2 of 4 @ Rs. 9,000/- per month. It is wrong to suggest that I have not spent Rs. 350/- per day on special diet or Rs. 10,000/- on conveyance or Rs. 2,00,000/- on medicines. It is

wrong to suggest that the vehicle was stationary on the road side and driver was not present in the Tempo. It is wrong to suggest that there is no fault of driver of Tempo. 2. What emanates from the above is that the offending vehicle was carrying steel rods which were protruding from its rear side of the carrier; this naked protrusion of the steel rods was by itself a traffic hazard. It had no business to ply on a public road with the building material in such negligent manner, exposing other road users to serious harm. The appellant has proven that the offending vehicle overtook his motorcycle and its driver applied its brakes suddenly when it came in front of the motorcyclist. It is into this preceding vehicle that the motorcyclist crashed into and suffered permanent injury and damage to his body. The appellant denied the suggestion that there was red cloth tied on the protruding steel rods. The Court would note that the red cloth by itself would not be a sufficient safeguard from the serious threat that they posed to other road users. The accident happened at 22:00 hrs. Obviously, the red cloth tied on the steel rods would not be visible and consequently would be of no value.

3. The appellant had also denied the suggestion that he was driving his motorcycle at fast speed and was negligent. The mere conjuncture of an accident involving a motorcyclist crashing into a vehicle ahead of it carrying steel rods is gruesome, wherein one of the rods pierced the eye of the victim; his three teeth were broken and his right arm was fractured. The nature of the injuries sustained was extensive and serious. Ordinarily nobody would put himself into any harm. Clearly, the appellant cannot be held liable for MAC.APP. 675/2014 Page 3 of 4 the injury caused on account of rash and negligent driving of the offending vehicle.

4. Accordingly, the contributory negligence apropos the appellant- motorcyclist is reduced to zero.

5. The appeal is allowed and disposed-off in the above terms. NAJMI WAZIRI, J
SEPTEMBER26 2019/kk MAC.APP. 675/2014 Page 4 of 4