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Court : Delhi

Decided On : Apr-28-1993

Reported in : AIR1993Delhi324; 51(1993)DLT514; 1993(27)DRJ18

Judge : Usha Mehra, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 96(2), 110A and 110D

Appeal No. : First Appeal No. 96 of 1991

Appellant : Radha Kishan Sachdeva and ors.

Respondent : L.D. Sharma and anr.

Advocate for Pet/Ap. : K.N. Kataria,; N.S. Bajwa,; P.N. Bhardwaj and;

Judgement :

Usha Mehra, J.

(1) Radha Kishan and others have come up in appeal under Section 110-D of the [Motor Vehicles Act, 1939](#) (hereinafter called the Act) assailing the order dated 29.1.80 passed by the Motor Accident Claim Tribunal (hereinafter called the Tribunal), thereby dismissing the claim petition of the appellants. In nut shell, the facts are that Shri Rajinder Kumar Sachdeva met with a road accident caused by a two-wheeler scooter on 3.7.75 at about 4.25 p.m. opposite Who building. Ring Road. He died on 6.7.75 in the hospital. Rajinder Kumar was employed with the Delhi

Electric Supply Undertaking. He was 25 years old, unmarried at the time of his death. At about 4.25 p.m., the deceased Along with his colleagues was walking on the 'Kacha Patri' in front of Who building and was going towards Indraprastha Bus Depot. A person driving Scooter No. HRG-1975 came at a fast speed from the Ashram side and hit the deceased, because of the impact Rajinder Kumar fell down. He received severe head injuries. It is the case of the appellants that the driver of the scooter was negligent. He came on the Kacha Patri side, as a result of which the deceased sustained head injuries. His colleagues, Baldev Raj and Daljit Singh, who were walking with him took him to the Irwin Hospital and lodged police report. Baldev Raj in his report gave details of the cause of accident and the number of the scooter.

(2) The parents of the deceased Rajinder Kumar filed the claim petition under Section 110-A of the Act claiming Rs.1 lacs from the owner, and insurer of the offending vehicle. According to them, the deceased was working as Assistant Controller (Boiler) in the Indraprastha Station of the Desu, and was drawing salary of Rs.950.00 per month. If the deceased had been alive, he would have been promoted to a better pay scale in due course of time. It is in this background that they claimed compensation of Rs. 1 lac. This claim petition was contested by the owner of the vehicle on the ground that the vehicle HRG-1975 was not involved in the accident; that the police contacted him somewhere on 4.7.75 and he informed the police that his scooter was not involved. From the police record he found that there was an over-writing in the word 'C' in the FIR. The police earlier correctly recorded the number as HRC-1975 but subsequently changed it to HRG-1975, in order to involve the respondent. Since the respondent denied the involvement of the scooter, therefore, the Insurance Company also took the plea that it was not liable for any compensation.

(3) The Tribunal after going through the evidence came to the conclusion that there was over writing in the number of scooter. He came to the conclusion that earlier the number was written as HRC-1975, it was subsequently changed to HRG-1975. therefore, the respondent could not be held liable and dismissed the petition.

(4) The award of the Tribunal has been challenged inter alias on the ground that the Tribunal in a very casual manner discarded the testimony of S/Shri Baldev Raj, Daljit Singh, S.S. Srivastava, Sohan Vir Singh. as well as of Lt. B.Pahuja, (RW-3). The Tribunal also ignored the site plan, dated 3.7.75 prepared and proved on record as Ex.PW-8/B. It is an admitted fact on record that Baldev Raj, Daljit Singh, and S.S. Srivastava are the eye witnesses of the occurrence. Baldev Raj is the author of the FIR. He appeared as PW-4 and stated categorically that he saw one two-wheeler scooter bearing No. HRG-1975 Vespa make coming from Ashram Side in a fast speed. It hit the deceased Rajinder Kumar, who was walking on the foot path (kacha side). He also testified that when the scooters hit the deceased he was on the left side of the deceased. The deceased was dragged by the scooters for about 4/5 feet. He noted the number of the scooter immediately. Since the deceased was bleeding profusely, therefore, he took him to the dispensary of his office and there from the Doctor sent the deceased to Irwin Hospital in Ambulance. He accompanied the deceased to the Irwin Hospital. Site plan was prepared in his presence on the date of the accident. He gave the scooter No. as HRG-1975 to the police on 3.7.75 itself. He was subjected to lengthy cross examination but no material contradiction could be elicited. Rather he reiterated that the scooter was HRG-1975 and was of light blue colour. He denied that he was not present at the spot. The suggestion that he was not there or that he furnished the scooter number subsequently is belied from the fact that he is the author of the Fir and the Fir was recorded on 3.7.75 itself. therefore, to my mind, from the cross examination of this witness nothing was extracted which could disprove that he was not present at the site when the accident took place or that he did not report the correct number of the scooter to the police on 3.7.75. To similar effect is the testimony of Daljit Singh, PW-5. He also testified that he noted the number of the scooter as HRG-1975. He Along with Baldev Raj PW-4, took the deceased to the Irwin Hospital in Dispensary Van. He could identify the driver of the scooter if shown to him. He was also subjected to cross examination but his testimony could not be dislodged. He reiterated that he noted the number of the scooter as HRG-1975. He noted the number when the scooter was lifted after it fell down after hitting the deceased. He denied the suggestion that he was not present at the place of the accident or that he was deposing falsely. It was not even

remotely suggested to him that the scooter number was not HRG-1975. To the same effect is the testimony of Sh. S.S. Srivastava, PW-6, who also testified that he saw the scooters of scooter No. HRG-1975. Vespa, coming from the Ashram side in a fast speed and hit the deceased on the 'Kacha' side. After hitting he dragged the deceased at quite a distance. The testimony of RW-3, Lt. B. Pahuja assumes importance when to a Court question he replied that in the original statement of Baldev Raj recorded on 3.7.75 itself the scooter No. given was HRG-1975. Official record produced by RW-3 showed that Baldev Raj, PW-4, on 3.7.75 itself made a statement giving the correct scooter number as HRG-1975. Further in the inquest report some over writing is alleged. But, to my mind, the Tribunal should not have discarded the testimony of an independent witness Baldev Raj, who was the author of the Fir and who saw the accident. He not only noted the scooter number but also correctly gave the number when he made the statement to the police on 3.7.75. Similarly Daljit Singh and S.S.Srivastava, Public Witness . 5 & Public Witness . 6 respectively also correctly mentioned the number of the scooter. If for any reasons best known to the police some over writing was done in the Fir or in the letter written to the Transport Authority Ghaziabad in the word 'G' for that respondent cannot take any advantage nor it could be a ground to disbelieve the independent testimonies of Baldev Raj (Public Witness -4), Daljit Singh (Public Witness -5) and S.S. Srivastava (Public Witness -6). In view of the truthful testimonies of these witnesses, any alleged overwriting in the inquest report or in the Fir or in the letter written to the Transport Authority will not make any difference. Site Plan Ex. PW-8/B was prepared on 3.7.75 itself, there also the number of the scooter has been given as HRG-1975. Counsel for the respondent contended that no reliance should be placed on the site plan because it must have been prepared in the Police Station itself as can be inferred from the testimony of Sh. Sohan Vir Singh, PW-8. The question, whether the site plan was prepared at the site or in the police station, is irrelevant, the fact remains that the site plan was prepared on 3.7.75 and that too at the pointing out of Baldev Raj, PW-4, and Daljit Singh, PW-5 who gave the number of the scooter as HRG-1975 and that is what is recorded in the site plan Ex. PW-8/B. thereforee, the appellants cannot be made to suffer because of the police official's negligence in recording the correct scooter number due to any mistake or for any other ulterior motive or reason. Nor the

alleged overwriting in the word 'C' can lead to the presumption that the scooter HRG-1975 was not involved in this accident. Rather the testimony of Sohan Vir Singh, PW-8, corroborates the fact that witnesses identified the scooter HRG-1975. The witnesses are truthful that is the reason they refused to identify wrong persons as driver. They told the police that the scooter was neither being driven by the respondent nor his brother Captain P.D. Sharma, nor by his two sons Anshu & Mukal or his domestic servant. If they could identify the scooter of the respondent as the offending vehicle, they could have also named anyone as driver. But they did not do so. According to them none of the person of respondent's family shown to them was driving the offending vehicle. This act in itself goes to prove that Baldev Raj and Daljit Singh are truthful witnesses. Mr. P.N. Bhardwaj, advocate for the respondent contended that the witnesses had given the colour of the scooter as light blue, whereas it is proved on record that scooter was of green colour. It was parked outside the house of the respondent. This contention of Mr. Bhardwaj is contrary to the record, because Vishveshwar Nath, RW-2, admitted that the colour of the scooter was light blue and it was Vespa. Hence, it is apparent that after the accident the colour of the scooter must have been changed to green. Respondent No. 1, L.D. Sharma, appearing as his own witness admitted that there was a dent on the scooter when it was handed over to the police, but tried to explain it a way by saying it was an old dent. This very scooter which was given to the police by RW-1 was identified by the witnesses as the offending scooter. The respondent could not bring any documentary evidence on record to prove that on the date of accident he was at home and the scooter remained parked at home throughout the day. Except the verbal testimony of Vishveshwar Nath, a neighbour, who can be called an interested witness, there is nothing placed on record to prove that the scooter remained parked in the house of the respondent. In fact no reliance can be placed on the testimony of an interested witness. Hence relying on the testimony of Baldev Raj and Daljit Singh, I am of the considered view that the offending scooter was HRG-1975 and not HRC-1975. Mr. Bhardwaj, then contended that the appellants had failed to prove the identity of the driver of the offending scooter and his relationship with the owner respondent No. 1 Nor the appellants have proved the vicarious liability of the respondent No. 1 nor his negligence. In the absence of the same, the responsibility for compensation

cannot be fastened on the respondents. According to Mr. Baldev Raj, the appellants have not pleaded the necessary facts in the petition which could vicariously held respondent No. 1 liable. In the absence of any pleadings of negligence on the part of respondent No. 1, no amount of evidence adduced by the appellant in this regard can be looked into. In the absence of vicarious liability having been pleaded and proved, the petition is not maintainable nor the negligence can be inferred. To support this contention he placed reliance on the following decisions, namely:- Kala alias Ashok Kumar and another V. Dharampal and another 1988 Acj 721. Savitri and others V. Lakhmichand and others 1988 Acj 909. Narayan Puno Gaudo, V. Kishore Tana Chodankar and another Air 1979 Goa 17. United India Fire and General Insurance Co. Ltd., Bangalore, V. Kum. Nagarathna and others : AIR1981 Kant169 . M/s Srinivasa Roadways, Madurai, V. Saroja and others : AIR1975 Mad126 . Bishan Devi and others V. Sirbaksh Singh and another : [1980]1SCR300 . British India General insurance Co. Ltd. Appellants V. Captain Itbar Singh and others. : [1960]1SCR168 . P.K. Krishnan Nair and others V. K. Karukaran Nair and others 1986 Acj page 41.

(5) The authorities cited by respondent No. 1 are of no help to him because in all these cases the courts were dealing with the question as to whether there was any breach of the condition of the insurance policy? Whether the driver of the offending vehicle was having a valid driving license? Nor it was the case of the respondent that his scooter was stolen, and thereforee, he was not liable. The plea of vehicle being stolen and used by unauthorised person could have saved the respondent from vicarious liability. But that is not his case. His case is, scooter remained parked at his house. Hence none of the authorities cited by him are applicable to the facts of this case. In the case in hand, there is no evidence led by the respondent that the vehicle was stolen and driven by an unauthorised person. In the absence of any such pleadings and proof it cannot be said that the offending scooter was driven by an unauthorised person having no valid driving license. It has been specifically pleaded in the claim petition that the driver of the vehicle drove it negligently and this fact has been proved by the testimony of Baldev Raj, PW-4, Daljit Singh, PW-5 and S.S. Srivastava, PW-6, who had stated in no uncertain words that the driver of the vehicle came on the kacha side where the deceased was walking and after hitting him dragged him for almost four or five

feet. scooters also fell down but immediately got up and lifted the scooter and ran away from there. To my mind. the claimants have proved negligence on the part of the driver of the scooter. From the facts narrated above the negligence of the scooter driver can be inferred, and therefore, the decisions relied by the respondent are of no help to him. Mr. Bhardwaj's contention that petition must fail because name of the driver was not given is also without force. It is now well settled that claimant may not know the name of the driver and it is not necessary to mention the same or implead the driver of the vehicle as party. Similar case came up before Karnataka High Court in the case of Basavaiah v. N.S. Ashok Kumar and another reported in 1985 Acj 789, where the driver was found guilty in a criminal case. He was absent in claim proceedings still the court held him guilty of rash and negligent driving. The vicarious liability of the principal was held on the ground that the principal will be liable for the act of the agent and agent in this case being the driver of the vehicle, in that case the owner pleaded that his car was stolen and later after search he found the car parked on road side at some other place. Police was not informed. There was no damage to the car. The court presumed, the owner gave the key of the car and it was driven with his knowledge and permission, therefore, he was held liable. In the present case also the vehicle in question i.e. HRG-1975 was involved in the accident. It belongs to respondent No. 1. It was being driven as witnessed by Baldev Raj and Daljeet Singh, therefore, presumption is it must be with the consent and knowledge of respondent No. 1. He is, therefore, vicariously liable. To arrive at this conclusion I am supported by the decision of the Andhra Pradesh High Court in the case of Oriental Insurance Co. Ltd. v. S.A. Gafer and Others reported in 1989 ACJ 938. Non mentioning of the name of the driver is not fatal.

(6) Next question which arises for consideration is whether the insurance company with which the offending vehicle was insured can take up any ground challenging the vicarious liability? The defense open to Insurance Company is only those mentioned in Section 96 (2) of the Act. Sub-section (2) clearly provides that insurer is not entitled to take any defense which is not specified in it. When the grounds of defense have been specified then nothing can be added to. The only manner of avoiding liability provided in sub-section (2) is through the defense mentioned therein. Sub-section (2) of Section 96 of the Act provides as under:-

'(2)No sum shall be payable by an insurer under sub-s.(1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(A)that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105:or

(B)that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :-

(I)a condition excluding the use of the vehicle- (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(B)for organized racing and speed testing, or

(C)for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or

(D)without side-car being attached, where the vehicle is a motor cycle; or

(II)a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification;or

(III)a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion or; (c) that the policy is void on the ground

that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.'

(7) thereforee, the reading of this sub-section shows that there are the defenses which are open to the insurance company. But none of these defenses have been taken up in this case. Hence the insurance company cannot challenge the negligence on the part of the scooter driver or the vicarious liability of respondent No. 1.

(8) Now coming to the question of quantum it is proved on record that the deceased was drawing a salary of Rs.779.30P per month at the time of his death, which is proved by PW-3, who happens to be his colleague. PW-3 made a statement in 1979 when he stated that he was drawing the salary of Rs.18,000.00 per annum. If the deceased had been alive he would also have been drawing Rs. 18,000.00 per annum in 1979. Father of the deceased made a statement in January, 1980. Father lived for 10 years after the accident whereas the mother of the deceased is still alive i.e. even after 18 years of the accident. Father of the deceased was 78 years old at the time of his death and mother is now around 88 years old. This proves longevity in the family of the deceased. Hence, 20 years multiplier will meet the end of justice. The salary of Rajinder Kumar, deceased, at the time of his death was Rs.779.30P, approximately rounded to Rs.780.00 per month. The annual income of the deceased would thus come to Rs.9,360.00 ($\text{Rs.780.00} \times 12 = \text{Rs.9,360.00}$). Applying the multiplier of 20 years, the total compensation amount would work out to Rs.1,87,200.00 ($\text{Rs.9360.00} \times 20 = \text{Rs.1,87,200.00}$). Counsel for the respondent No.2 contended that there should have been deduction on account of the personal expenses as well as the expectancy of life and lump sum payment. I am afraid no deduction can be made on this account, because if the deceased had lived, his salary would have also increased as stated by Sh.Baldev Raj, PW-3.

(9) Moreover, in a recent judgment of Supreme Court in the case of Hardeo Kaur v. Rajasthan State Road Transport Corporation reported in : [1992]2SCR272 , it has been observed:-

'WE are of the view that deduction of 1/3rd out of the assessed compensation on account of lump sum payment is not justified. The accident took place in July, 1977 and the litigation has come to an end, hopefully, today, 15 years thereafter. This court in Motor owners Insurance Co.Ltd. v. J. K. Modi, 1981 Acj 507 held that the delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes a sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee makes the compensation demand liked years ago less than quarter of its value when it is received after such a long time. In Manjushri Raha v. B.L. Gupta, 1977 Acj 134 , this court awarded compensation by multiplying the life expectancy without making any deduction. With the value of rupee dwindling due to high rate of inflation, there is no justification for making deduction due to lump sum payment. We, therefore, hold that the courts below were not justified in making lump sum deduction in this case.'

(10) thereforee, relying on the observation of the Supreme Court, I am of the view that no deduction should be allowed on account of lump sum payment or expectancy of life or on account of self expenses. Respondent-insurance company has not taken up the plea of limited liability nor proved the same on record. thereforee, the liability of the insurance company is held to be unlimited.

(11) For the reasons stated above I set aside the award of the Tribunal dated 29.11.80 and hold that the appellants would be entitled to the compensation of Rs. 1,87,200.00 with interest at the rate of 12% per annum from the date of application till realisation. Respondents are jointly and severally liable to pay the awarded compensation with interest.

(12) Appeal allowed with costs.