

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Motor Vehicle Act,1988

MAC App. No. 453 of 2008

Judgment reserved on:25th November, 2008

Judgment delivered on: 2nd December, 2008

1. Smt. Rani
W/o Late Shri Jai Kumar Mittal

2. Master Rohit Mittal, aged 12 yrs.

S/o Late Shri Jai Kumar Mittal

3. Kumari Jyoti Mittal, aged 9 “ yrs.
D/o Late Shri Jai Kumar Mittal

4. Smt. Roshni Devi
W/o Late Sh. Kishori Lal

All R/o N-57, Welcome, Seelampur-III
Delhi.

(The appellant Nos.2 and 3 being minors
are represented through their mother,
next friend and natural guardian the
Appellant No.1)

....Appellants

Through: Mr.S.S. Sishodia, Adv.

Versus

1. Shri Raj Kumar
S/o Shri Kharkhan Singh,
R/o Village Bali Gaon, P.S.-Behra,
District Darbhanga, Bihar.

2. Shri Naveen Malik
S/o Shri Dharambir
R/o A-84, Pocket-I A Block,
Paschimpuri, New Delhi.

3. National Insurance Co. Ltd.
Division No. 18, 1st Floor,
Palika Bhawan, R.K. Puram Ring Road
New Delhi.
Through:Ms.Rajdeepa Bahura, Adv. for R-3

....Respondents.

V.B.Gupta, J.

1. By way of the present appeal, filed under Section 173 of the Motor Vehicle Act,1988 (for short as “Act”), the Appellants have challenged the judgment dated 5th July, 2008 passed by Ms. Neena Krishna Bansal, Judge, MACT (for short as “Tribunal”), Delhi, vide which the claim petition filed by the appellants was dismissed.

2. The facts in brief are that on 22nd March, 2006 deceased Jai Kumar Mittal was coming from Pitam Pura to his residence on two wheeler scooter bearing No. DL-5SP-6038. At about 2:05 am, the scooter was hit by vehicle No. DL-1LE-6040 which was being driven by respondent No.1 at a high speed and in a rash and negligent manner. Due to this accident the deceased sustained fatal injuries.

3. Respondent No.1 did not file his written statement within time and as such his defence was struck off vide order dated 7th November, 2007 passed by Tribunal.

4. Respondent No.2, the owner of offending vehicle, in his written statement took a preliminary objection that no accident was caused by vehicle. On the date of alleged accident, his vehicle was standing at A-6-A,New Slum Quarters, Paschimpuri, Delhi. It has been further stated that “untraced report” has been sent by Police.

5. Respondent No.3, Insurance Company in its written statement has stated that involvement of the alleged offending vehicle has not been established. However, the factum of insurance has been admitted by respondent no.3.

6. It has been contended by Learned Counsel for appellants that the driver of the offending vehicle had no defence available to him and therefore he opted not to file the written statement nor the owner has produced the driver to prove his defence.

7. The Investigating Officer of the criminal case has informed regarding the accident and disclosed the number of the offending vehicle to PW2 Vinod Kumar Mittal, brother of deceased, who has corroborated this fact in his evidence. Since the vehicle number has been mentioned by PW2, the Tribunal wrongly held that the offending vehicle is not involved in the accident. It is also contended that strict rule of evidence are not applicable to proceeding under the Act.

8. On the other hand, it has been argued by learned counsel for insurance company that there is no evidence on record to show that offending vehicle was involved in accident.

9. In the entire petition, the appellants have not mentioned what was the offending vehicle-whether it was two wheeler, three wheeler or four wheeler” It has been simply stated that the offending vehicle bearing No. DL-1LE-6040 being driven by respondent No.1 hit the scooter from behind. In the FIR No. 102/06 also, no number of the offending vehicle has been mentioned.

10. As per the case of the appellants, the Investigating Officer has disclosed the number of the offending vehicle to the brother of deceased, Sh. Vinod Kumar Mittal, who has appeared in witness box as PW2.

11. Admittedly, there is no eye witness in this case as PW2 brother of deceased in his evidence by way of affidavit has stated that on 22nd March, 2006 his brother, Jai Kumar Mittal was coming from Pitam Pura to his house in Two wheeler and when about 2:05 am, he reached at Outer Ring Road, at Chandigram Akhada, then offending vehicle driven by its driver rashly and negligently, hit the scooter of his brother from behind. In his cross-examination this witness categorically states that; “He is not an eye-witness to the accident”

12. The main thrust of argument of learned counsel for appellants is that, Investigating Officer of this case, ASI Mahavir Singh has informed the brother of the deceased, regarding the offending vehicle.

13. Under these circumstances, ASI Mahavir Singh, was important witness, but he was not examined by appellants for reason best known to them.

14. The Tribunal has dealt this issue and its findings, are as under; “The Petitioners have claimed that the involvement of this vehicle was informed to them by ASI Mahavir Singh on the day of accident but ASI Mahavir Singh has not been examined by the petitioners as witness. There is nothing on record to show the involvement of the offending vehicle. The petitioners may have filed a protest petition against the untraced report but the fact remains that the involvement of the vehicle has not been proved on record. In these circumstances, it cannot be held that the accident was caused by the alleged offending vehicle owned by Respondent no.2.”

15. Since the appellants, have failed to show the involvement of the offending vehicle in the accident, the Tribunal rightly dismissed the claim petition filed by them. There is no ambiguity or infirmity in the impugned judgment.

16. The present appeal, therefore fails, and the same is, hereby, dismissed.

17. Parties shall bear their own cost.

18. Trial Court record be sent back.

Sd/-
V.B.GUPTA, J.

