

Delhi High Court Bala And Ors. vs Moti Chand Gupta And Ors. on 21 October, 2003 Equivalent citations: 2005 ACJ 1918, 2003 VIIIAD Delhi 256, 107 (2003) DLT 643, 2003 (71) DRJ 573 Author: S Mahajan Bench: S Mahajan JUDGMENT S.K. Mahajan, J. 1. ADMIT. 2. Matter being short, the same has been heard with the consent of the parties and disposed of by this order. 3. This appeal is directed against the judgment dated October 15, 1999 passed by the Motor Accident Claims Tribunal whereby the application of the appellants for grant of compensation for the death of one Mr.Roop Chand husband of appellant No.1 and father of appellants No.4 to 8 was dismissed on the ground that the appellants were not able to prove that the vehicle in question was involved in the accident. A few facts relevant for deciding this appeal are: 4. The deceased Roop Chand on 13.8.1992 at about 4/5 p.m. in the evening was going on his bicycle to his house in Sector-49, NOIDA via the Kotla road when a three wheeler scooter came from the Patparganj side being driven in a rash and negligent manner by respondent No.1 and hit the cycle from behind. As a result of the accident, the deceased fell down on the road and received severe injuries and was immediately moved to the hospital where, because of the injuries sustained by him he died the next day at about 9.45 p.m.. Alleging that the accident was caused due to the rash and negligent driving of the three wheeler scooter, the LRs of the deceased filed an application for compensation before the Motor Accident Claims Tribunal. Besides the driver and owner of the vehicle, the insurance company was also made a party in the proceedings before the tribunal. Despite notices having been served upon respondents 1 and 2, they did not enter appearance before the tribunal and were proceeded ex-parte. The claim petition was being defended only by respondent No.3. 5. In the written statement filed by respondent No.3, it was stated that the insurance company was not aware of the alleged accident and if it was proved that the accident was caused by the offending vehicle, in that eventuality the insurance company may be able to avoid its liability to pay compensation on the ground that the driver of the vehicle was not having a valid driving license to drive the vehicle in question. On the pleadings of the parties, the tribunal framed the following issues: - "1. Whether the deceased received injuries because of rash and negligent driving of three wheeler Scooter No.DL-1LA-0717 by R-1? 2. Whether the petitioners are entitled to compensation and if so, to what amount and from whom? 3. Relief." 6. In support of their case, the appellant No.1 wife of the deceased appeared as a witness and a witness from the office where the deceased was working was also produced. The Investigating Officer who had investigated the accident was also produced as a witness before the Tribunal. In her statement, the wife of the deceased produced certified copies of certain documents, which were marked as Exhibits P-1 to P-19. The documents produced by the appellants and admitted in evidence as Exhibits P-1 to P-19 included the charge-sheet filed by the police in the Criminal Court, the site plan, the FIR and the statement of the witnesses recorded before the Metropolitan Magistrate where the driver of the offending vehicle was tried for an offence committed under Section 279/304A IPC. No evidence was produced by the respondents before the tribunal. The tribunal on the basis of this evidence, held that the appellants were not able

to prove the negligence of the driver and involvement of the offending vehicle in the accident. The claim petition was, accordingly, dismissed, aggrieved by which the appellants have filed the present appeal. 7. After the amendment of the Motor Vehicles Act, 1939 by the 1988 Amending Act, there is a sea change in the procedure for claiming compensation by the victims of the road accident. Under Section 166 of the Motor Vehicles Act, an application for compensation may be made not only by the LRs of the deceased but it may also be made by any agent duly authorised by the injured or by the LRs of the deceased. Under Sub-Section (4) of Section 158, it is mandatory for the claims tribunal to treat any report of accident forwarded to it under sub-Section (6) of Section 158 as an application for compensation under the Act. Under sub-Section (6) as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report is completed by a police officer, the Officer In-charge of the Police Station is required to forward a copy of the same within 30 days from the date of recording information or as the case may be on completion of such report, to the claims tribunal having jurisdiction and a copy thereof to the concerned insurer and where the copy is made available to the owner, he would also, within 30 days of the receipt of such report, forward the same to such claims tribunal and the insurer. The report so received is to be treated as an application for compensation. 8. Plain reading of Section 158(6) and Section 166(4) of the Act shows that even the charge-sheet submitted by the Police Officer to the tribunal is to be treated as an application for compensation by the claims tribunal. Once the charge-sheet is forwarded to the claims tribunal, the tribunal is immediately made aware that the accident has been caused by the offending vehicle and the tribunal in that case is not required to go into any further technicality to direct the claimants to still prove that the offending vehicle was involved in the accident unless, of course, the party opposing the petition denies the involvement of such vehicle. In the present case, neither the owner nor the driver denied the involvement of the offending vehicle in the accident. In that view of the matter, immediately after the report was filed, either by the Police Officer under Section 158(6) of the Act or was produced in Court by the claimants as certified copy Exhibit P-1, in my opinion, the tribunal ought not have discarded the same. As the tribunal has itself observed that strict rules of evidence are not observed in proceedings before the tribunal, the tribunal should not have taken a technical view that the charge-sheet and other documents certified copies of which were produced before it, should have still been proved by a witness. A perusal of the charge-sheet clearly shows that it was the offending vehicle, which was involved in the accident and the driver of that vehicle had been charged to face trial for an offence punishable under Section 279/304A of the IPC. In this view of the matter, the tribunal has clearly misdirected itself in observing that the documents Exhibited as P-1 to P-19 could not be treated as substantive evidence and could not be read in support of the case of the appellant. 9. On a perusal of the documents filed before the tribunal read with relevant provisions of the Motor Vehicles Act, I am clearly of the opinion that three wheeler scooter bearing Registration No.DL-1L-A-0717 was involved in the accident. Though there is no evidence in rebuttal and on the basis of the

documents on record, it can be held that the accident was caused due to the rash and negligent driving of three wheeler Scooter by its driver, however, even assuming that the negligence of this vehicle is not proved and once it is proved that vehicle in question was involved in the accident, the tribunal should have taken recourse to Section 163-A of the Motor Vehicles Act to grant relief to the appellant on the ground of no-fault liability. 10. For the foregoing reasons, the judgment of the tribunal being perverse, cannot be sustained. I, accordingly, allow this appeal, set aside the impugned judgment and remand the case to the tribunal with a direction to decide issues No.2 and 3 about the quantum of compensation payable to the appellants. The parties are directed to appear before the tribunal on 17th November, 2003. 11. Trial Court file be sent back immediately.