

Delhi District Court

Ramnath Poddar & Ors. vs . Raj Kumar @ Raju on 28 November, 2022

IN THE COURT OF SAMAR VISHAL
PRESIDING OFFICER : MOTOR ACCIDENT CLAIMS
TRIBUNAL, EAST DISTRICT : KARKARDOOMA COURTS
DELHI

In the matter of :

CNR NO.: DLET01-000363-2018

MACP No.360/2018

Ramnath Poddar & Ors. Vs. Raj Kumar @ Raju

1. Sh. Ram Nath Poddar
(Now deceased)

Through his Legal Representatives
(I) Sh. Karan Kumar (Son)
(ii) Tuntun Podar (Son)
(iii) Nandani (Daughter)

All Resident of:
D-169/1, Nursery T-Huts
Geeta Colony, Gandhi Nagar,
Delhi

..... Petitioners

VERSUS

Rajkumar @ Raju
S/o Raghu Nandan,
R/o H.No. 188 Gali No. 6
Ghas Mandi Gandhi Nagar
Delhi-110031

.....Respondent

Date of Institution	:	19.01.2018
Date of Reserving	:	20.09.2022
Date of Judgment	:	28.11.2022

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AWAR D

1. The present claim petition is based on Detailed Accident Report (DAR) filed under section 166 clause (4) of Motor Vehicles Act, 1988(herein after Act) by the investigating officer of FIR No. 551/2017 under section 279/304A/468/471 of Indian Penal Code and section 3/181/146/196 of Motor Vehicle Act, Police Station, Geeta Colony.

2. In an accident which occurred on 19.11.2017 at about 4:30 P.M., Montoon and Shamshad, who were on a ride on a cycle rikshaw with an attached engine (called jugad in local parlance) fall from it and died, when this jugad was on a flyover. The investigating officer filed a Detailed Accident Report which has been proceeded with as a petition for compensation under the Motor Vehicles Act by the legal heirs of the deceased Montoon. The other deceased was Shamshad for whom a separate DAR was filed, which is also going on as a claim petition.

3. The respondent Raj Kumar allegedly is the driver of the jugad, who was carrying certain parcels and both the deceased. He contested the petition primarily on three grounds that his vehicle was not involved in the accident, there is no eye-witness of the accident and that his rikshaw does not fall within the definition of a motor vehicle under the Act and therefore he is not liable to pay compensation for the death of the deceased.

4. On the basis of pleadings, following issues were framed on 24.04.2017:-

(i) Whether Mr. Shamshad and Mr. Manton died in a motor vehicular accident that occurred at 4.30 p.m. on 19.11.2017 at Geeta Colony Flyover, near Cremation MACP No.360/2019 Ramnath Poddar & Ors Vs. Raj Kumar @ Raju Ground, Geeta Colony, Delhi due to rash and negligent driving of scooter engine fitted rickshaw (jugad) by the respondent?(OPP)

(ii) Whether the petitioners are entitled to compensation, if so, to what amount?(OPP)

(iii) Whether the petitioners are entitled to interest on the award amount, if so, at what rate and for which period?

(vi) Relief.

5. From petitioner side, Ramnath Poddar who is the father of the deceased Montoon examined himself as PW-1, Rani PW2, who is wife of second deceased Shamshad examined herself as PW-2 and also examined Reshma allegedly an eye witness as PW3. The respondent examined himself as RW1.

6. I have heard Mr. Mohit Dham, counsel for petitioners and Mr. Dileep Survanshi counsel for respondent. The aforesaid issues are decided as follows -

ISSUE No. 1 :Whether Mr. Shamshad and Mr. Manton died in a motor vehicular accident that occurred at 4.30 p.m. on 19.11.2017 at Geeta Colony Flyover, near Cremation Ground, Geeta Colony, Delhi due to rash and negligent driving of scooter engine fitted rickshaw (jugad) by the respondent?(OPP)

7. In an action founded on the principle of fault liability, the proof of rash and negligent driving of the offending vehicle is sine qua non. However, the standard of proof is not as strict as applied in

criminal cases and evidence is tested on the touchstone of principle of MACP No.360/2019 Ramnath Poddar & Ors Vs. Raj Kumar @ Raju preponderance of probabilities. It is also the law that the tribunal is not bound by the technical rules of evidence.

8. The father of the deceased Montoon and wife of the deceased Shamshad have examined themselves and deposed that the deceased were going in a jugad which is an engine fitted rikshaw to their destination on 19.11.2017 and met with an accident at around 04:30 PM. Both of them deposed that the driver of this jugad was driving it in a rash and negligent manner and when it reached the Geeta Colony Flyover, the driver lost control due to which the deceased fell on the road. They were severely injured and died due to that accident. According to the evidence of PW1 and PW2, both the deceased were earning Rs.20,000/- per month. It is pertinent to mention here that both these witnesses Rani and Ramnath Poddar are not the eye witnesses of the case as per the DAR. The eye witness of this case is shown as Reshma by the petitioners, who has been examined as PW-3. According to her evidence, on 19th of previous year of that month, she was going to Sunday market from her house. At the flyover of Taj Enclave, the respondent was driving a theli fitted with an engine in high speed. Two boys who were residing near her house and known to her by face were sitting above the petties (parcels) kept in the theli. They fell down from the petties. She tried to stop the respondent and asked him to provide her mobile numbers of the said boys so that she could inform their families. She personally seen both the boys. When she turned one of the boys, he died within minutes of the accident and the second boy had injuries on back of his head. With the assistance of traffic police, she sent them to hospital in a three-wheeler. She kept the petties on the roadside. She was under severe mental trauma as she had seen one boy dying and another boy seriously injured and therefore, she came back to her house. The MACP No.360/2019 Ramnath Poddar & Ors Vs. Raj Kumar @ Raju police did not reach at the place of accident till the time she was there. Police never recorded her statement. Police never came to her.

9. The investigating done by the IO and the DAR filed by him does not show her as eye witness of the accident. Though, it is clear from the investigation of the police that the deceased of this case died after falling from this so called jugad but for lack of any eye witness in the DAR, it cannot be said that this vehicle was being plied on the road in a rash and negligent manner though without doubt it was being run in violation of law. Moreover, the witness Reshma also does not say that this vehicle jugad was being driven in a rash and negligent manner. Her statement only reflects that this vehicle may be driven in high speed and nothing more. Though, there is some doubt even on her credibility as eye witness but even if this fact is ignored, her testimony is not evidence of the rashness and negligence in the plying of this offending vehicle. Therefore, though it is proved that the deceased had died in an accident as alleged in the DAR but there is no further evidence of rashness and negligence on the part of the driver of the offending vehicle. This issue is decided accordingly.

ISSUE No. 2. (ii). Whether the petitioner is entitled to compensation, if so, to what amount and from whom? OPP.

10. Section 168 of the Act enjoins the Claims Tribunal to hold an inquiry into the claim to make an award determining the amount of compensation which appears to it to be just and reasonable. The compensation should not be a windfall or a bonanza nor it should be pittance.

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11. Now in the present case, one of the primary defence of the respondent is that this vehicle jugad is not covered under the provisions of Motor Vehicles Act and there is no concept of insurance, registration or driving licence about such vehicles and therefore neither this petition is maintainable nor he is liable to compensate the legal heirs of the deceased under the procedure of motor accident claims.

12. Though such vehicles are occasionally seen plying on the road but they do so in complete disregard of law. These vehicles are not approved by law to run on the road and are dangerous to the safety of the other users of the road. They pose a serious challenge to the road traffic still can be seen sometimes on the road. There is no provision for their registration under the law and running of such vehicles on road is a violation of section 39 of the Motor Vehicles Act, 1968, which provides for a compulsory registration of the motor vehicles. These vehicles cannot be registered because in fact they are not motor vehicle within the meaning of the Act and for same reason they cannot be insured to cover the third-party risks. It seems that the deceased was sitting on this vehicle without any concern for his safety or his security that too, over the parcels. These vehicles are made by the persons, who use them by simply attaching an engine of some scraped vehicle like scooter, motorcycle etc. and don't drive on the road in accordance with the rules and regulations in this regard. However, for the use of such vehicle, the person using it shall be liable to be prosecuted under section 304-A/279 of the Indian Penal Code and can also be proceeded for compensation under the ordinary civil court under tortious liability. Therefore, the petitioners are not entitled for any compensation under section 166 of MACP No.360/2019 Ramnath Poddar & Ors Vs. Raj Kumar @ Raju MV Act which is given in respect of accidents arising out of the use of the motor vehicles. The issue is decided accordingly.

RELIEF:

13. In view of the findings on above points, no compensation can be granted to the legal heirs of the deceased on the basis of DAR filed by the investigating officer in this case.

Announced in the open
Court on 28.11.2022

Samar Vishal
Presiding Officer-MACT (East)
Karkardooma Courts, Delhi

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