

# SUPREME COURT OF INDIA

Krishan Gopal

Vs.

Sandhya Devi

C.A.No. \_\_\_\_\_ of 2009

(Altamas Kabir and Cyriac Joseph JJ.)

18.02.2009

## JUDGMENT

**Altamas Kabir, J.**

1. Leave granted.

2. The respondents herein are the parents of one Jitender Sharma, who died in an accident on 21<sup>st</sup> December, 1998. The respondents filed a claim petition, being No.39 of 1999, which was dismissed by the Motor Accidents Claims Tribunal, Kullu, on 1st December, 2001. Against the said order of dismissal of their claim, the respondents preferred an appeal, being FAO No.46 of 2002, in the High Court of Himachal Pradesh at Shimla, which was allowed in favour of the respondent nos.1 and 2 herein on 29th November, 2005. By virtue of the said decision, the High Court held that Jitender Sharma had died due to the rash and negligent driving of Jitender Thakur, the Appellant No.2 herein, while he was driving the scooter owned by the Appellant No.1 (father of Appellant No.2) and that both of them were jointly and severally liable to pay compensation of Rs.2 lakhs, together with interest at the rate of 9 per cent per annum w.e.f. 6th October, 1999, till deposit of the amount.

“They were also directed to pay the costs of the appeal to the respondents assessed at Rs.3,000/-.”

3. The appellants have filed the instant appeal against the said decision of the High Court.

4. In order to appreciate the circumstances in which the Tribunal dismissed the claim petition and the High Court allowed the same, it is necessary to briefly set out the facts leading to the filing of the claim before the Motor Accidents Claims Tribunal.

5. On 21st December, 1998, while the Appellant No.2 herein was riding a scooter belonging to the Appellant No.1, Krishan Gopal Thakur, there was an accident in which the said scooter and a Himachal Road Transport Corporation bus which was proceeding from Kullu towards Manali, were said to have been involved. According to the claimants, the accident had

occurred on account of rash and negligent driving of the driver of the bus as well as the driver of the scooter. As far as the owner and driver of the bus are concerned, it was their case that no collusion had at all taken place between the scooter and the bus. However, as far as the appellants are concerned, it is their case that the scooter was being driven by the deceased himself and the Appellant No.2 was the pillion rider on the scooter. According to them, the accident had taken place due to rash and negligent driving of the driver of the bus in question. On the materials before it the Motor Accidents Claims Tribunal came to the conclusion that the claimants had failed to prove that the accident had occurred due to negligence of the bus driver and dismissed the claim petition accordingly.

6. In appeal, it was observed that the main question which arose in the appeal was as to who was driving the scooter at the time of the accident. In the FIR (FIR No.255 of 1998) it has been shown that the same was recorded at the instance of Jitender Thakur son of Krishan Kumar, who is the Appellant No.2 herein. The FIR indicates that the complainant, Jitender Thakur and deceased Jitender Sharma, had gone to Haripur and were, thereafter, coming on his scooter which skidded on some sand lying on the road. At the same time, one HRTC bus came from the opposite side which, however, did not hit the scooter and they had suffered the injuries even before the bus reached them. The accident was, however, witnessed by one Rewati Devi, who was examined as PW.5 and deposed that while she was drinking tea in the Dhaba of Milap Chand, she saw Jitender Thakur driving the scooter with Jitender Sharma sitting as the pillion rider. At the same time, a bus was coming from the opposite side and collided with the scooter due to the fault of both the bus driver as also the driver of the scooter. She also deposed that Jitender Sharma who was sitting at the pillion of the scooter, died as the handle of the scooter pierced his stomach. She categorically stated that the scooter did not skid on the spot as had been indicated in the First Information Report.

7. From what has been mentioned hereinabove, there appears to be two versions of the accident in which Jitender Sharma died. The version of the claimant is that the scooter in question was being driven by Jitender Thakur, the Appellant No.2 herein, and that the deceased was the pillion rider. Jitender Thakur, who was also the complainant, had, at the initial stage while lodging the First Information Report, stated that the scooter had slipped on a patch of sand and that the bus was not involved in the accident and that injuries to the deceased had already occurred before the bus reached the scene of the accident. Subsequently, however, he changed his tune and contended that the accident had occurred on account of the rash driving and negligence of the bus driver.

8. Apart from the said two conflicting versions of the incident, as depicted by the Appellant No.2, there is another dispute as to who was actually driving the scooter belonging to the Appellant No.1. While it has been claimed by the Appellant No.2 that it was the deceased who was driving the scooter and that he was the pillion rider and was not, therefore, responsible for the accident, his version has been contradicted by P.W.5 Rewati Devi, who has categorically stated that she had witnessed the accident and that it was the Appellant No.2 who was driving the scooter and that the deceased was a pillion rider.

9. The trial court accepted the version of the Appellant No.2 that he was the pillion rider while the deceased was driving the scooter and consequently came to a finding that the complainant had not been able to prove that the Appellant No.2 was responsible for the accident in which Jitender Sharma died and, therefore, rejected the claim petition of the respondents herein.

10. The High Court, however, in appeal accepted the version of the accident as narrated by P.W.5 Rewati Devi and has come to a definite finding that it was not the deceased, but the Appellant No.2 who was, in fact, driving the scooter. The High Court, therefore, disagreed with the finding of the Tribunal that the deceased was himself responsible for the accident and held the Appellant No.2 to be the only person responsible for the accident and that since the Appellant No.1 was the owner of the scooter, he too was liable for payment of compensation to the claimants, who are the respondents herein.

11. From the facts as narrated hereinabove, the view taken by the High Court, relying on the evidence of P.W.5 does not appear to be improbable. Apart from the fact that P.W.5 was the only eye-witness to the actual accident, the High Court has also disbelieved the version projected on behalf of the appellants on account of the different stands taken by the Appellant No.2 as to how the accident actually occurred. While at the very initial stage it had been contended by the Appellant No.2 that the accident had occurred even before the bus had arrived at the scene, at a later stage it was contended that it was the bus driver's negligence which had caused the accident. The High Court also took note of the fact that the Appellant No.2 had not come forward to be examined as to how the accident had actually taken place.

12. The reversal of the Award of the Motor Accident Claims Tribunal by the High Court cannot be said to be perverse or without any basis and we see no reason to interfere with the same. The appeal is, accordingly, dismissed, with costs assessed at Rs.20,000/-.