

SUPREME COURT OF INDIA

Jawahar Singh

Vs.

Bala Jain & Ors.

SLP(Civil)No.8660 of 2009

(Altamas Kabir and Cyriac Joseph,JJ.,)

09.05.2011

JUDGMENT

Altamas Kabir,J.,

1. Notice was issued in the Special Leave Petition (Civil) No.8660 of 2009 on 2nd April, 2009, confined to the question regarding the Petitioner's liability by way of contributory negligence in the accident which occurred on 18th July, 2004. Special Leave Petition (Civil) Nos.864-865 of 2010 were also filed by the Petitioner against National Insurance Company Ltd., Jatin and the heirs of Mukesh Jain, deceased. A brief background of the facts will help us to understand and appreciate the case of the Petitioner better. For the sake of convenience, the facts have been taken from Special Leave Petition (Civil) No.8660 of 2009.

2. On 18th July, 2004, at about 1.20 p.m. the deceased, Mukesh Jain, was riding his two-wheeler scooter No.DAI 1835, with his son, Shashank Jain, as pillion rider. According to the prosecution story, when they had reached the SDM's Office, Geeta Colony, Delhi, a motorcycle, bearing registration No. DL-7S-G-3282, being driven in a very rash and negligent manner, tried to overtake the scooter and in that process struck against the scooter with great force, as a result whereof the deceased and his son were thrown on to the road and the deceased succumbed to the fatal injuries sustained by him.

3. A claim was filed by the widow, two daughters and one son of the deceased before the Motor Accident Claims Tribunal, Karkardooma Courts, Delhi, on 17th August, 2004, being Suit No.209 of 2004. Suit No.210 of 2005, was separately filed on behalf of Master Shashank Jain, son of the deceased, making a separate claim to compensation on account of the death of his late father Mukesh Jain. Both the matters were taken up together by the learned Tribunal which disposed of the same by a common Award dated 12th September, 2007. By the said Award, the Tribunal awarded a sum of 8,35,067/- in favour of the claimants together with interest @7% from the date of institution of the petition, namely, 17th August, 2004, till the date of realisation. Certain directions were also given in the Award for disbursement of the said amount. The claim of the Petitioner No.3 was settled at

24,900/-. The insurer was held liable to satisfy the Award and to recover the amount from the owner of the motorcycle.

4. The said Award was challenged before the Delhi High Court in MAC APP No.697 of 2007, which disposed of the same on 10th December, 2007, by upholding the judgment of the Motor Accident Claims Tribunal.

5. The Delhi High Court held that Jatin was a minor on the date of the accident and was riding the motorcycle in violation of the provisions of the Motor Vehicles Act, 1988, and the Rules framed thereunder. The High Court also relied on the evidence of PW.8, who has deposed in clear and in no uncertain terms that the accident had occurred due to the rash and negligent driving of the motorcycle by Jatin. No suggestion was given to the said witness (PW.8) that the accident did not take place on account of rash and negligent driving on the part of Jatin. Such deposition went unchallenged and became final. It is against the said order of the learned Single Judge of the Delhi High Court and the order dated 26th September, 2008 dismissing Review Application No.333 of 2008, that the present Special Leave Petition has been filed.

6. The main thrust of the submissions made on behalf of the Petitioner was that the deceased, Mukesh Jain, who was riding the two-wheeler scooter, was, in fact, solely responsible for the accident. Mr. Rajesh Tyagi, learned counsel for the Petitioner, contended that the manner in which the accident had taken place would indicate that the deceased had contributed to a large extent to the accident and such fact had not been properly appreciated either by the Motor Accident Claims Tribunal or the High Court. It was submitted that too much of importance had been given to the evidence of PW.8, Head Constable Devender Singh. On the other hand, the Tribunal wrongly discarded the testimony of R1W1 and R1W2 as they were minors. Mr. Tyagi submitted that the High Court had proceeded on the basis that it had not been denied on behalf of the Petitioner herein that Jatin was driving the motorcycle in a rash and negligent manner and, hence, there was no reason to interfere with the Award of the Tribunal.

7. Mr. Tyagi submitted that the Petitioner, Jawahar Singh, had no liability in regard to the incident, as would be evident from his deposition as R1W4, in which he admitted that he was the owner of the motorcycle in question and that on 18th July, 2004 at 1.00 p.m., while he was at his residence, he received a telephonic message indicating that his nephew, Jatin, had met with an accident. In his deposition, he stated that the key of the motorcycle was on the dining table of his house and without his knowledge and consent, Jatin took the keys of the motorcycle and was, thereafter, involved in the accident. It was submitted that despite the same, the Motor Accident Claims Tribunal also held him to be responsible for the death of the victim in the accident and while a sum of 8,35,067/- with interest @7% from the date of institution of the petition till the date of realisation was awarded in favour of the Claimants, the Insurance Company, which was directed to pay the said amount in the first instance, was given the right to recover the same from the Petitioner. He submitted that it was in view of such wrong approach to the problem that the judgment and order of the High Court impugned in the Special Leave Petition was liable to be set aside.

8. On the other hand, it was urged by learned counsel for the Respondents, that the orders of the Tribunal and the High Court did not call for any interference, since the factum of rash and negligent driving by Jatin had been duly proved from the evidence of PW.8 and there was nothing at all to show that the deceased had in any way contributed to the accident by his negligence or that the petitioner had taken sufficient precaution to see that his motorcycle was not misused by any third party.

9. On behalf of Respondent No.6, National Insurance Company Ltd., it was sought to be urged that at the time of the accident, the motorcycle was being driven in breach of the terms and conditions of the Insurance Policy and, accordingly, the Insurance Company could not be held liable for making payment of the compensation awarded by the Motor Accident Claims Tribunal. Apart from the fact that Jatin, who was riding the motorcycle, did not have a valid driving licence, it had also been established that he was a minor at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the Claimants and such liability had been correctly fixed on the owner of the motorcycle, Jawahar Singh. It has been well settled that if it is not possible for an awardee to recover the compensation awarded against the driver of the vehicle, the liability to make payment of the compensation awarded fell on the owner of the vehicle. It was submitted that in this case since the person riding the motorcycle at the time of accident was a minor, the responsibility for paying the compensation awarded fell on the owner of the motorcycle. In fact, in the case of *Ishwar Chandra Vs. Oriental Insurance Co. Ltd.*¹, it was held by this Court that in case the driver of the vehicle did not have a licence at all, the liability to make payment of compensation fell on the owner since it was his obligation to take adequate care to see that the driver had an appropriate licence to drive the vehicle. Before the Tribunal reliance was also placed on the decision in the case of *National Insurance Co. Ltd. Vs. G. Mohd. Vani & Ors.*² and *National Insurance Co. Ltd. Vs. Candingeddawa & Ors.*³ wherein it was held that if the driver of the offending vehicle did not have a valid driving licence, then the Insurance Company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It was submitted that no interference was called for with the judgment and order of the High Court impugned in the Special Leave Petition.

10. Having heard learned counsel for the respective parties, we are inclined to agree with the Respondents that this is not a case for interference in view of the fact that admittedly the motorcycle belonging to the Petitioner was being driven by Jatin, who had no licence to drive the same and was, in fact, a minor on the date of the accident. While issuing notice on 2nd April, 2009, we had limited the same to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen.

11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor

and it was the responsibility of the Petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same.

12. Without going into the merits of the case, we are of the view that the story of Jatin, who was a minor, walking into the house of the Petitioner and taking the keys of the motorcycle without any intimation to the Petitioner, appears to be highly improbable and far-fetched. It is difficult to accept the defence of the Petitioner that the keys of the motorcycle were taken by Jatin without his knowledge. Having regard to the aforesaid facts, we are not inclined to accept the case of contributory negligence on the part of the deceased, attempted to be made out on behalf of the Petitioner. Accordingly, since the notice on the Special Leave Petition was confined to the question of contributory negligence, if any, on the part of the deceased, we see no reason to interfere with the Award of the Motor Accident Claims Tribunal, as confirmed by the High Court. The Special Leave Petitions are, accordingly, dismissed, but without any order as to costs.

¹(2007) 3 AD (SC) 0753

²(2004) ACJ 1424

³(2005) ACJ 0040