REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO NO. 705/2002**

KANSHI RAM VERMA ..... Appellant
Through: Mr.Navneet Goyal, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents
Through: None.

% Date of Decision : December 7, 2010

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

J U D G M E N T

: REVA KHETRAPAL, J.

The short question which arises for decision in the present appeal is whether the driver of a motor vehicle, having pleaded guilty to the charge of rash and negligent driving under Section 279 of the Indian Penal Code, can claim exoneration from the charge of rash and

negligent driving in the Motor Accident Claims Petition filed by the injured-claimant.

2. Briefly delineated the case of the appellant is that on 7th July, 1994 at about 6.45 p.m. he was driving his two-wheeler scooter no. DAB-7801 when a CRPF truck No. DL-1L-A-2720, driven rashly and negligently by the respondent no.3, came from the opposite direction and hit his scooter near Chaburja Marg, Malka Ganj, resulting in his sustaining injuries as detailed in the claim petition. The respondents no.1 and 2, who are the owners of the CRPF vehicle in question, have given an entirely different version in their written statement and their stand is that the respondent no.3 was driving the CRPF vehicle in question, but the accident did not take place as alleged by the petitioner. The respondents no.1 and 2 state that minor injuries were received by the appellant due to his own fault and for no fault of the respondent no.3, and for this reason the appellant did not lodge any FIR, but subsequently after four months of the incident, manipulated to lodge a false First Information Report.

3. The appellant appeared in the witness box as his own witness as PW6 and examined PW2, PW3 and PW4 to prove the medical records of his treatment as well as PW5 to get the FIR, Ex.PW5/1 proved on record. He also examined PW1 to prove his leave account as Ex.PW1/1. The respondent no.3 appeared in the witness box as RW1 but no other witness was examined from the side of the respondents.

4. The learned Tribunal while dealing with the aspect of rash and negligent driving examined the evidence on record and held that the appellant had failed to prove that he had suffered injuries due to the rash and negligent driving of the respondent no.3. The relevant part of the findings rendered by the learned Tribunal in this regard are reproduced hereunder:

> "8. ISSUE NO. I & III.
>
> Both these issues are inter-related and they are being taken up together. Petitioner in his evidence has stated that he was driving his two wheeler scooter and his colleague Sh. Lallan was sitting on the pillion seat of the scooter and when they reached the top of Kamla Nehru Ridge, CRPF vehicle driven by respondent No.3 came from opposite side and had hit the scooter of the petitioner resulting in injuries to the petitioner. Counter version has been given by

respondent No.3 in his evidence. It is the categoric stand of the respondent No.3 that there was slight drizzling and he was slowly driving the CRPF vehicle in question and he took a turn towards left side at a very slow speed near circle curve of Kamla Nehru Ridge and he had felt that something had hit the CRPF vehicle from left rear side and he immediately stopped his vehicle and saw that the petitioner along with pillion rider had fallen on the road after hitting the left rear wheel of CRPF vehicle in question and the petitioner had apologized for his mistake and he took the petitioner to Hindu Rao Hospital and there was no damage to the scooter of the petitioner and no FIR was lodged by anyone and the petitioner was not bleeding at that time.

9. Petitioner had lodged an FIR after about four months of the accident in question and the reason given by him in his evidence is that he was not in a position to lodge the FIR prior to 25.10.94. However, the petitioner has admitted in his evidence that he was not admitted in hospital after the accident in question. To prove the negligence of respondent No.3, petitioner strongly relies upon certified copy of order dated 17.03.2001 of the criminal court vide which respondent No.3 was held guilty and convicted under Section 279 IPC and was admonished. It is evident from the aforesaid order Exbt. RW-1/P2 that the respondent No.3 was acquitted under Section 338 of IPC on compounding of the offence with the injured. The aforesaid order of the criminal court is based upon the statements Exbt. RW-1/P1 made by the petitioner as well as respondent No.3. Petitioner had stated before the criminal court that he had compromised the matter with the respondent No.3 without prejudice to his claim before the Motor Accident Tribunal. Petitioner had belatedly lodged an FIR after four months of the accident in question without any justification and from the order Exbt.

RW-1/P2 of the criminal court, it cannot be concluded that the negligence was of the respondent No.3. The aforesaid order of the criminal court was based on the compromise arrived at between the petitioner and respondent No.3. In any case, order of the criminal court, convicting the driver cannot be made the basis of holding that the driver of CRPF vehicle was negligent. Independent evidence has to be led in the present proceedings. To find out whether the version given by the petitioner or respondent No.3 regarding the manner of taking place of this accident is correct, it is necessary to have a look at the certified copy of the site plan of the place of accident on record. A bare perusal of the site plan Exbt. PW-6/50 on record reveals that at point A, the scooter of the petitioner was said to have been hit by the CRPF vehicle and at point B, CRPF vehicle was found to be standing. According to the petitioner, CRPF vehicle was coming from opposite direction and if it was so and had hit the scooter of the petitioner, then, in all probability, the CRPF vehicle should have been found stand (sic. standing) ahead of two wheeler scooter of the petitioner towards East side. The above-referred site plan on record does not support the version of the petitioner regarding the manner of taking place of the accident in question. Rather, it lends credence to the version given by respondent No.3 regarding the manner of taking place of this accident. Moreover, mechanical inspection report exbt. PW-6/54 of the scooter of the petitioner does not indicate any extensive damage to the scooter of the petitioner. Had there been on head collusion of the CRPF vehicle and the scooter of the petitioner, there would have been extensive damage to the scooter of the petitioner. It is not so.

10. In view of what is observed above, I hold that the petitioner has failed to prove that he had suffered injuries due to rash and negligent driving by

respondent No.3. This issue is accordingly decided against the petitioner."

5. In view of the aforesaid findings, the learned Tribunal proceeded to dismiss the claim petition filed by the appellant herein. Aggrieved therefrom the appellant has preferred the present appeal.

6. In the course of arguments, Mr. Navneet Goyal, the learned counsel for the appellant vehemently contended that in the claim petition as well as in the course of his deposition as PW6, the appellant had given a vivid account of the accident by stating that when he reached at the top of Kamla Nehru Ridge on his scooter and was on his left side near the crossing, the CRPF vehicle came from the University side and hit his scooter with its front, due to which he received injuries on his right leg with multiple fractures both bones and a cut of 5" to 6", where 15-16 stitches were applied on the left arm, besides other injuries; and he was taken to Hindu Rao Hospital in the same vehicle. The respondent no.3, who was responsible for the accident by his rash and negligent driving, after leaving him at the hospital ran away without even informing the constable on duty.

7. Mr. Navneet Goyal, the learned counsel for the appellant, also contended that though after the conclusion of the evidence of the appellant, the respondent no.3 was produced in the witness box to rebut the version of the appellant, the testimony of the respondent no.3 does not inspire confidence. The version given by him is contrary to the site plan which shows that the appellant was hit by the front of the CRPF Vehicle. Reliance was also placed by Mr. Goyal on the following decisions of the different High Courts to contend that the courts have consistently held that where the driver of the offending vehicle has pleaded guilty and has been convicted by the criminal court, it is not necessary for the claimants to prove by adducing further evidence that the accident was caused by the rash and negligent driving of the offending vehicle:

(i) ***Sukhinder Anand vs. Khaza Vazir Ali and Ors., 1994 ACJ 786;***

(ii) ***L.N. Prakash vs. United India Insurance Co. Ltd. & Ors., 1996 ACJ 217;***

(iii) ***Vinobabai and others vs. K.S.R.T.C. and another, 1979 ACJ 282;***

(iv) ***Labh Kaur and Ors. vs. Raj Kumar and Ors., 1996 ACJ 744;***

(v) ***Basavaiah vs. N.S. Ashok Kumar and Another, 1985 ACJ 789;*** and

(vi) ***Govind Singh vs. A.S. Kailasam, 1975 ACJ 215.***

8. In ***Sukhinder Anand's*** case (supra), the High Court of Andhra Pradesh, after taking into consideration the plea of guilt entered by the driver and his consequent conviction by the Magistrate held that:

> "…no further evidence was necessary to prove that the accident was due to the rash and negligent driving of RW-1. It follows that the Claims Tribunal was not correct in holding that the petitioner failed to prove negligence of the driver of the lorry."

9. In the case of ***L.N. Prakash*** (supra) also, the plea of guilt had been entered by the motorcyclist in the criminal case and on the aforesaid basis the Karnataka High Court held that:

> "….Where such plea of guilt is made, it is for the respondent to place satisfactory and convincing material to dislodge the presumption arising out of plea of guilt made before the criminal court. In my opinion, this legal burden has not been satisfactorily discharged. He cannot be allowed at this stage to plead innocence or ignorance...."

10. In the case of ***Vinobabai and others*** (supra), a Division Bench of the same High Court in a case where the driver had pleaded guilty and was convicted on his aforesaid plea, held that:

> "Thus, the law is well settled that when the driver is convicted in a regular trial before the criminal court, the fact that he is convicted becomes admissible in evidence in a civil proceeding and it becomes *prima facie* evidence that the driver was culpably negligent in causing the accident. The converse is not true; because the driver is acquitted in a criminal case arising out of the accident, it is not established even *prima facie* that the driver is not negligent, as a higher degree of culpability is required to bring home an offence."

11. In the case of ***Labh Kaur*** (supra), it was reiterated by the Punjab and Haryana High Court, relying upon its earlier judgment in ***Gulshan Kumar vs. Balwinder Singh, 1986 ACJ 809 (P&H)*** that it is a settled principle of law that while the judgment of the criminal court pertaining to an accident is not relevant for adjudication of a claim for compensation beyond the fact that the driver of the offending vehicle was tried and convicted, any admission of guilt made by him in the course of such trial, in the absence of any explanation or other material on record leads to the only interpretation

that the accident was caused due to the rash and negligent driving of the driver.

12. In ***Basavaiah's*** case (supra), a Division Bench of the Karnataka High Court held that the driver of the car having pleaded guilty to the charge and on his own plea of guilt, he having been convicted and sentenced, it could safely be said that the offending car was being driven in a rash and negligent manner by him, resulting in the accident, causing injuries to the claimant.

13. A similar view was expressed by the High Court of Madras in the case of ***Govind Singh's*** case (supra) where the Court held: "The admission of the driver made before a criminal court that the accident was committed by his rash and negligent driving shifts the legal burden on the driver to show that such an admission, if at all, was made by extraneous motive."

14. In the instant case, the Tribunal has completely failed to appreciate and to consider this aspect of the matter. The Tribunal ought to have held that in his testimony RW1 had rendered no explanation, leave alone any plausible explanation for entering the

plea of guilt before the criminal court. The Tribunal instead relied upon the site plan enclosed with the chargesheet which was not prepared at the time of the accident, but much later on, presumably at the time when the First Information Report was registered. Indeed, the site plan could not have been prepared at the time of the accident since it is the respondent's own case that the driver of the CRPF vehicle had taken the appellant to Hindu Rao Hospital immediately after the accident.

15. Then again, I find that a stand has been taken by the respondents no.1 and 2 in their written statement that the driver of the scooter had merely brushed against the rear wheel of the CRPF vehicle and sustained minor injuries. The record shows otherwise. The appellant, it is borne out from the record, sustained multiple fractures of the right leg, both bones and remained in a cast from toe to hip for about 10 weeks and thereafter from toe to below knee for another 1 ½ months. Apart from this he suffered a deep cut on his left arm on which 15-16 stitches were administered apart from other injuries. His leave record and his medical records both been

testimony to the fact that the injuries were far from minor and could not have been so categorized.

15. In view of the above aforesaid, the findings of the Tribunal are unsustainable. The driver of the CRPF vehicle is accordingly held guilty of rash and negligent driving. The matter is remanded back to the Tribunal to assess the quantum of damages payable to the appellant by the respondents no.1 and 2. Since the accident occurred in the year 1994, it will be in the interest of justice if Tribunal takes up the matter on priority basis and disposes of the same not later than four weeks from the date of the receipt of this order.

16. The appeal is allowed with the aforesaid directions. Records be sent back to the concerned court.

REVA KHETRAPAL
(JUDGE)

December 7, 2010
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