

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 145/2008

Judgment delivered on: 07.03.2008

Kanhiya Lal

..... Appellant.

Through: Mr. J.S. Kanwar, Adv.

versus

Ramesh Kumar & Ors.

..... Respondents

Through: Mr. Kanwal Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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Aggrieved with the findings of the impugned award the appellant has preferred the present appeal. The main grievance of the appellant is that the claim petition filed by the appellant has been

dismissed by the Tribunal only on the ground that he had failed to prove factum of the accident. Mr. Murari Lal, PW-1, father of the appellant entered the witness box and in his examination-in-chief, he denied his presence at the spot of accident. Placing reliance on the said testimony of PW-1, the learned Tribunal felt that once the said witness himself has denied his presence at the spot, therefore, mere registration of an FIR against the offender of the vehicle could not have been of any help to the appellant to claim compensation amount. Mr. J.S. Kanwar counsel for the appellant contends that statement of Murari Lal, was recorded by the police under Section 161 of the Criminal Procedure Code and case was registered against the driver of the offending vehicle and therefore, due to some oversight and inadvertence the word 'not' got inserted in the deposition of the said PW-1. Counsel contends that due to the error committed by the stenographer or due to negligence of the counsel representing the appellant, the appellant should not be made to suffer on account of the said mistake which crept in while recording the statement of PW-1.

Counsel also contends that the appellant had suffered disability to the extent of 33% and great prejudice would be caused to the appellant if the matter is not remanded back so as to give fresh opportunity to the appellant to prove the negligence.

On the other hand, Mr. Kanwal Chaudhary, counsel for the respondent contends that no fault can be found with the findings of the Tribunal as the said witness PW-1 who was stated to be the only witness of the accident himself denied his presence at the spot, therefore, the same apparently shows that no accident had occurred, involving the vehicle implicated in the said FIR. Counsel for the respondent further contends that not only this, even the appellant had failed to prove any kind of disability so as to claim compensation amount.

I have heard counsel for the parties and have perused the record.

Respondent no.1 is the driver of the offending vehicle and the said vehicle was duly insured with respondent no.2 and the matter is

being duly represented by the counsel for respondent no.2/insurance company. Therefore, I do not feel the necessity of directing notice on respondent no.1.

It is not in dispute that Mr. Murari Lal who was stated to be the only eye witness of the said accident had himself denied his presence at the spot in his deposition and no fault could be found with the findings of the Tribunal when the witness himself had given deposition contrary to the case set up by the appellant. In any event of the matter, time and again it has been observed by this Court that accident cases arising under the Motor Vehicles Act have to be tried not strictly as per the procedure and requirements as laid down in the Cr.P.C. and Evidence Act. The claim petitions filed by the victims of the accidents cannot be thrown or throttled in such a hush-hush manner. The said witness Mr. Murari Lal in his statement made under 161 of the Cr.P.C. has categorically stated that he was going with his son at the time when the offending vehicle came in a rash and negligent manner and caused the accident. Reference to his statement

has been made by the Tribunal while deciding the issue no.1. The same is reproduced as under:

“I have carefully gone through the statement made by PW 1 the father of the injured in the FIR. In the statement before the police PW 1 had stated that he was going with his son and at that time the offending vehicle came in a rash and negligent manner and caused the accident. But in the oral testimony in his examination in chief itself this very witness states that he was not present at the spot. Therefore, the mere marking of a document FIR at Ex. PW2/A cannot be held to have been proved its contents. The accident was witnessed by PW 1 as per the FIR.”

Considering the cumulative effect of the statement made by the said witness Mr. Murari Lal, under Section 161 CrPC registration of FIR, seizure of the vehicle and registration of the case against the driver mere insertion of word ‘not’ in the deposition of the said witness, could not have been over-emphasized to dismiss the petition. Although, it is correct that lawyers have to remain vigilant at the time of recording of statements by the stenographers attached with the courts and if any error is committed while recording statements then at the earliest possible opportunity, steps are required to be taken for necessary rectification, yet at the same time justice cannot be denied

to the victims of the accidents just for some folly committed by the lawyer or the court steno when all other circumstances support the occurrence of the accident. In any event of the matter since this matter is being remitted back to the Tribunal, therefore, this Court would not give any view on the merits of the issue relating to the negligence.

It is not in dispute that the appellant belongs to a poor and illiterate family as even before signing the statement in English, Mr. Murari Lal could not have himself known as to what was being typed.

Considering all these circumstances, the matter is remanded back to the Tribunal so as to afford fresh opportunity to the appellant to prove the issue of negligence. The tribunal shall give due opportunity to the contesting respondents.

The parties are directed to appear before the Tribunal on 25.3.2008.

With these directions, the appeal stands disposed of.

March 07, 2008
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KAILASH GAMBHIR, J