

* **HIGH COURT OF DELHI : NEW DELHI**

MAC App. No.216 of 2008

% Judgment reserved on: 30th July, 2008

Judgment delivered on: 8th August, 2008

Shri Harjeet Singh
S/o Late S.Bhagwant Singh
R/o 2/4, Mall Road, Tilak Nagar,
New Delhi-110018 Appellant
Through: Mr.B.L.Chawla, Adv.

Versus

1.Shri Suraj Prakash
S/o Shri Gopal Dass
R/o House No.115-B,
Laxmi Vihar, Uttam Nagar,
New Delhi-110059

2.The New India Assuranc Company Limited
Divisional Office No. 320200,
C-30, Community Centre,
Naraina Phase-I,
New Delhi-110028.

3.Shri Kishan Pal Singh,
S/o Shri Chattar Pal Singh,
R/o Vilage and Post Office Jaroi,
P.S.Bajoi, Tehsil Chandosi,
District Muradabad,
Uttar Pradesh. ...Respondents.

Through: Mr.Kanwal Chaudhary
for R-2.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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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? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

V.B.Gupta, J.

The present appeal under section 173 of the Motor Vehicles Act, 1988 (for short as the “Act”) has been filed for setting aside and reversal of award dated 07.12.07 passed by Sh. Suresh Chand Rajan, Judge, Motor Accidents Claims Tribunal (for short as the “Tribunal”), Delhi against the Appellant.

2. Brief facts of the case are that Suraj Prakash, the claimant/Respondent no.1 herein, aged 29 years suffered bodily injuries in a road accident on 13.11.03. Allegedly the accident was caused by Kishan Pal Singh, Respondent no.3 herein who was driving vehicle no. DL-1RC-8517 at a fast speed and in a rash and negligent manner. The offending vehicle is owned by Harjeet Singh, Appellant herein.

3. The accident occurred when the Respondent no.1 on 13.11.03 at about 12.00 a.m. was going from Janpath to Tank Road, Karol Bagh by riding on Motorcycle no. DL-4SA-K-4159 via Mandir Marg. When he reached at Gole Chakkar, Talkatora, Shanker Road, a TSR bearing no. DL-1RC-8517 coming from Shankar Road being driven by Respondent no. 3 at a fast speed and in a rash and negligent manner, hit the motorcycle of the Respondent No.1 from right side. Due to impact, Respondent no.1 fell on the road and sustained grievous injuries. The Respondent no.1 was removed to RML Hospital.

4. The Respondent no.1 filed the petition claiming compensation of Rs.5,00,000/-.

5. Respondent No.3/Driver of the offending vehicle was duly served but did not appear and as such vide order dated 30th September, 2004 passed by the trial court, he was proceeded ex-parte.

6. Owner/Respondent No.2, who is the appellant herein in his written statement, has taken the defence that the scooter in question was insured for the period 29th January, 2003 to 28th January, 2004. It is further stated that the scooter in question was being driven by respondent No.3 on 30th November, 2003, when it was stolen and it has not been recovered so far and the matter has been reported to P.S. Kapashera, Delhi.

7. The Insurance Company i.e. respondent No.2 herein, in his written statement has admitted that the vehicle in question was insured with it. However, it is stated that in case the driver, respondent No.3 of the offending vehicle was not holding a valid and effective driving licence at the time of accident, then the answering respondent is not liable to pay any compensation.

8. Vide impugned judgment, the Tribunal awarded compensation of Rs. 48,463/- along with the interest @ 7% per annum from the date of the filing of the

petition till its realization, to the Respondent no.1 herein.

9. It has been contended by the Ld. Counsel for the Appellant that in the operative para of the impugned award, the Tribunal has not given specific directions as to which Respondents are liable to satisfy the compensation amount as awarded by the Tribunal.

10. The vehicle in question i.e. DL-1R-C-8517 was duly insured with the Respondent no.2 i.e. Insurance Company for the period in question and copy of the policy was placed on record and the same has not been disputed by the Insurance Company, therefore, the Insurance Company alone is liable to satisfy the award.

11. There is no liability of the Appellant to pay the amount of award or any other sum awarded in the impugned award. Further, non-production of the driving licence was for the reasons beyond the control of the Appellant, as the vehicle was stolen on 30th November, 2003 and the driver who was in power and

possession of the driving licence had left his home town. Thus, it is the liability of the Insurance Company to pay the amount of the award to the exclusion of the Appellant.

12. On the other hand, it is contended for the Ld. Counsel for Respondent no.2/Insurance Company that the fact of offending vehicle being stolen may not absolve the Appellant from its liability. At the time of accident, the vehicle was being driven by Respondent no.3 herein who was in the employment of the Appellant and therefore, it was obligatory on the part of the owner to have placed on record copy of the driving licence so as to enable the Insurance Company to take appropriate steps for the verification of the driving licence.

13. Thus, in the absence of any such details furnished by the Appellant, the liability has to be fixed upon the owner of the offending vehicle and not on the insurer.

14. The Tribunal on the pleadings of the parties, framed following issues;

1. Whether the petitioner suffered injuries on 13.11.2003 due to rash and negligent driving of TSR no.DL-1RC-8517 on the part of R-1?
2. To what amount of compensation is the petitioner entitled and from whom?
3. Relief.

15. On issue No.1, the Tribunal gave finding that the accident was caused by the driver of the vehicle No.DL-1RC-8517.

16. On issue No.2, the Tribunal has awarded a sum of Rs.48,463/- as compensation to the injured. However, it has nowhere mentioned in its order “from whom the petitioner i.e. the injured, is entitled to receive compensation”.

17. On issue No.3, the findings of the Tribunal read as under;

“15. Relief:- In view of the discussion made herein above, I hereby pass an

award in the sum of Rs.48,463/- to the petitioner and against the respondents which I consider to be just and fair as on the date of the accident. The petitioner is also entitled for interest on account of the forbearance and detention of money. Hence, I Award the interest at the rate of 7% per annum on the awarded amount from the date of the filing of the petition till its realization. Respondents are directed to deposit the award along with proportionate interest within 30 days. In case the respondent fails to deposit the awarded amount within 30 days, he shall be liable to pay penal interest at the rate of 12% per annum after expiry of 30 days and till realization. Out of the awarded amount let a sum of Rs.25,000/- be kept in FDR in a nationalized bank for a period of 5 years. Copy of award be supplied to both the parties. File be consigned to the Record Room."

18. I have gone through the entire judgment of the Tribunal as well as the trial court record, the Tribunal has nowhere mentioned as to from whom the injured will recover the amount of compensation. When admittedly, the offending vehicle was insured with the Insurance Company, it is only the Insurance Company

who can be made liable to make the payment of the award.

19. The plea of the Insurance Company before this Court is that it was obligatory on the part of the owner of the offending vehicle to have placed on record copy of the driving licence so as to enable the Insurance Company to take appropriate steps for the verification of the driving licence.

20. Though, the Insurance Company in its written statement has taken an objection with regard to the effect that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident but no finding on this issue has been given by the Tribunal.

21. The only ground taken in the present appeal on behalf of the appellant, who is the owner of the offending vehicle, is that the offending vehicle was validly insured with the Insurance Company and as

such it is the Insurance Company who alone is liable to pay compensation amount.

22. Under these circumstances, the impugned judgment passed by the Tribunal is set aside and the matter is remanded back to the Tribunal to give a finding only on this issue.

“As to from whom the claimant/injured is entitled to receive compensation”.

23. The Tribunal shall dispose of the matter within three months from today.

24. Parties are directed to appear in person before the Tribunal on 25th August, 2008.

25. Trial court record be sent back forthwith.

26. Accordingly, the present appeal stands disposed of.

8th August, 2008
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V.B.GUPTA
(JUDGE)