

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ CM(M) No.973/2008**

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Date of decision: 7th September, 2009

RAVINDER SINGH

..... Petitioner

Through : Mr. Pradeep Kumar Arya,
Mr. V.K. Chopra and
Mr. Baljeet Singh, Advs.

versus

VIMLESH & ORS

..... Respondents

Through : Mr. Sanjiv Kumar,
Ms. Vasudha Kumar,
Mr. Sachin Kaushik and
Mr. Sumit Kaushik, Advs. for
R-1 to 5.
Mr. Pradeep Gaur, Adv. for
R-6.**CORAM :-****THE HON'BLE MR. JUSTICE J.R. MIDHA**

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

JUDGMENT (Oral)

1. The petitioner has challenged the award of the learned Tribunal whereby his application under Order 1 Rule 10 of the Code of Civil Procedure has been dismissed.

2. The accident dated 13th October, 2005 resulted in the death of Joginder Singh. The deceased was survived by his widow, one son, two daughters and mother who filed the claim petition before the learned Tribunal.

3. The deceased was working as Assistant Commissioner of Police with Delhi Police. On 13th October, 2005, the deceased

was on duty. He was returning from the airport in the official Ambassador Car bearing No.DL-1C-G-0471. The car was being driven by Narender Kumar, official driver of Delhi Police on duty, Constable Sanjay Kumar was sitting along with the driver on the front seat and the deceased was sitting on the back seat. When the car reached near Chowk New Bridge, Opposite Hanuman Mandir, near Technical Airport, Palam, New Delhi, the Matiz Car bearing No.DL-9C-C-0763 driven by the petitioner came from Gopi Nath Bazar side and hit the Ambassador Car near its rear wheel with such a huge impact that the Ambassador car skid towards the pavement and the deceased sustained fatal injuries.

4. The dependants of the deceased filed the claim petition against the petitioner and Oriental Insurance Co. Ltd. The petitioner produced the copy of the Insurance Company before the police on the basis of which Oriental Insurance Co. Ltd. was impleaded as respondent No.2.

5. Oriental Insurance Co. Ltd. found that the copy of the Insurance policy filed by the petitioner with the police was forged and fabricated by him as Oriental Insurance Co. Ltd. had never insured the vehicle in question. Oriental Insurance Co. Ltd. registered a FIR against the petitioner whereupon the petitioner wrote a letter to the Insurance Company that he is ready to settle the claim arising out of the accident subject to Oriental Insurance Co. Ltd. agreeing to withdraw the criminal complaint lodged against him. On the basis of the letter dated 16th November, 2006, the petitioner was able to secure bail in the criminal case

but after securing the bail the petitioner did not settle the claim of the dependants of the deceased. Copy of the letter dated 16th November, 2006 has been produced by learned counsel for Oriental Insurance Co. Ltd. and the same is reproduced hereunder:-

“To

The Divisional Manager
Oriental Insurance Company Ltd.
Aligarh

WITHOUT PREJUDICE

Respected Sir,

It is really shocking to know that Oriental Insurance Company Ltd is doubting the correct & genuine nature of the insurance policy no.4291 of my Matiz Car no.DL9CC 0763 ending on 18/10/05 and has raised fingers on my character & honest behaviour. This is stated with emphasis that the policy no.4291 issued to me is correct, genuine & authentic who's premium is duly paid.

To my utter dismay it is understood that a criminal complaint is lodged against a genuine customer like me despite the above position.

However only to avoid unnecessary tension & for the purposes of buying peace, I as owner of Matiz Car No.DL9CC 0763 offer to settle any claim arising against this vehicle subject to Oriental Insurance Company Ltd. agrees to withdraw the criminal complaint lodged against me.

This offer has been made taking into consideration the physical harassment, mental tension & likely expenses in making the defence against criminal complaint/prosecution.

This letter is sent without prejudice.

Thanking you,

Yours faithfully

(Ravinder Singh)
883, Near D.E.S.U. Office
Mahipalpur
New Delhi-110037.”

6. The petitioner filed an application before the learned Tribunal under Order 1 Rule 10 of the Code of Civil Procedure for impleading the driver, owner and insurer of Maruti Zen Car bearing No.DL-4CN-5521 on the ground that the Ambassador Car of the deceased was hit by Maruti Zen Car bearing No.DL-4CN-5521 and not by the petitioner.

7. The learned Tribunal dismissed the application of the petitioner on the ground that the petitioner has hit the Ambassador Car in which the deceased was travelling as per the FIR and, therefore, the driver, owner and Insurance Company of Maruti Zen Car bearing No.DL-4CN-5521 were not the necessary parties. The petitioner has challenged the impugned order of the learned Tribunal before this Court. The notice of this petition was issued on 22nd August, 2008. Although, no stay was granted by this Court, the petitioner has been successful in delaying the proceedings before the learned Tribunal on the ground that the proceedings are pending before this Court and the proceedings before the learned Tribunal arising out of the accident dated 13th October, 2005 are still pending.

8. There are two eye-witnesses of the accident, namely, Narender Kumar, driver of the Ambassador Car and Constable Sanjay Kumar who was sitting in the Ambassador Car on the front seat. Both the eye-witnesses are public servants and the FIR was registered on the statement of Sanjay Kumar. The Maruti Zen Car bearing No.DL-4CN-5521 was driven by Arvind Pal Singh and was owned by Baldev Singh.

9. Vide order dated 26th August, 2009, Narender Kumar, the driver of the Ambassador Car and Constable Sanjay Kumar were summoned to remain present before this Court. The Investigating Officer was also summoned before this Court.

10. In compliance with the order dated 26th August, 2009, the driver, Narender Kumar, Constable Sanjay Kumar, driver of Maruti Zen Car, Arvind Pal Singh, owner of Maruti Zen Car, Baldev Singh and the Investigating Officer are present in the Court. The Investigating Officer of the case filed by Insurance Company against the petitioner is also present in the Court. The Investigating Officer submits that the driver Narender Kumar, Constable Sanjay Kumar and the driver of Maruti Zen Car, Arvind Pal Singh have been cited as eye-witnesses in the criminal case registered against the petitioner. All the three eye-witnesses have been examined by this Court and they all submit that the petitioner hit the Ambassador Car in the rear portion with such a high speed that the Ambassador Car in which the deceased was travelling skid up to the pavement. The version of the three eye-witnesses is clearly supported by the photographs on record which clearly show damage on the Matiz Car on the front and on the Ambassador Car in the rear portion. There is damage to the Maruti Zen Car also in the front and all the three eye-witnesses have explained that the Maruti Zen Car hit the pavement. According to them, the Maruti Zen Car did not hit the Ambassador Car or the Matiz Car of the petitioner.

11. The learned counsel for the petitioner refers to the statement of Constable Sanjay Kumar in the FIR where it is recorded that the Maruti Zen Car also hit the Matiz Car from behind. However, there is no damage to the Matiz Car from behind in the photographs. This statement was, therefore, put to Constable Sanjay Kumar who submits that at the time of the accident, he felt that the Maruti Zen Car had hit the Matiz Car and, therefore, he made such a statement but later on he found that it was not so. The statement made by Constable Sanjay Kumar in the FIR has been sufficiently explained. The petitioner is just trying to take undue benefit of the statement in the FIR which has been sufficiently explained by the eye-witness, Constable Sanjay Kumar who is present in the Court today.

12. According to learned counsel for the petitioner, the Ambassador Car in which the deceased was travelling was hit by Maruti Zen Car and not by the car of the petitioner. According to learned counsel for the petitioner, the driver of the Ambassador Car and the accompanying Constable falsely implicated the petitioner in collusion with the driver of the Maruti Zen Car who was the real accused. The question was put to learned counsel for the petitioner as to why the two public servants, namely, the driver of the Ambassador Car and the Constable who were on duty would mix-up with the accused and falsely implicate an innocent person going on the road to which the learned counsel for the petitioner has no answer which implies that he had practically no case and this is a purely frivolous petition.

13. No case for impleadment of the driver, owner and Insurance Company of Maruti Zen Car is made out. The application filed by the petitioner before the learned Tribunal is misconceived and misuse and abuse of process of law. This petition has been filed merely to delay and defeat the claim petition. The statements made by the petitioner in this petition are absolutely false. The site plan filed by the petitioner before this Court is also frivolous. While deciding the case, the learned Tribunal shall consider launching appropriate proceedings for perjury against the petitioner. The findings of the learned Tribunal dismissing the petitioner's application are upheld.

14. This petition is dismissed with costs of Rs.25,000/- to be paid by the petitioner to claimants/respondents No.1 to 5 within two weeks.

15. Noting that this case relates to the accident dated 13th October, 2005 and more than three and a half years have already lapsed, the learned Tribunal is directed to expedite this case and endeavour to decide the same within a period of three months.

16. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

J.R. MIDHA, J

SEPTEMBER 07, 2009

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