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DR.PRAMOD KUMAR

..... Petitioner

Through: Mr.Hameed S. Shaikh and
Mr.Navjot Kumar, Advocates.
Inspector Dalbir Singh, Crime
Branch.

versus

GANESH & ANR.

..... Respondents

Through: Mr.Amit Kumr Pandey,
Advocate.

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? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

JUDGMENT (Oral)

1. The petitioner has challenged the order dated 15th July, 2009, whereby the learned Tribunal has dismissed petitioner's application under Order 18 Rule 17 of the Code of Civil Procedure, 1908, for permission to summon the owner of Bharat Automobiles, Bhopal.
2. The accident dated 24th October, 1999 resulted in grievous injuries to the petitioner, who filed a claim petition before the learned Tribunal against the driver and owner of the Maruti Van

bearing No.DL-3CA-4655. Respondent No.1 is the driver and respondent No.2 is the owner of the offending vehicle.

3. The respondents are contesting the claim petition before the learned Tribunal on various grounds *inter alia* that the offending vehicle was not involved in the accident and at the time of the alleged accident, the offending vehicle was lying at the garage of Bharat Automobiles, Bhopal.

4. Learned counsel for the petitioner submits that there is no garage by the name of Bharat Automobiles at Bhopal and he sought permission from the learned Tribunal to summon the owner of Bharat Automobiles to prove the non-existence of their garage at Bhopal.

5. Vide order dated 7th September, 2009, Investigating Officer of this case was directed to remain present. Inspector Dalbir Singh, the Investigating Officer is present in Court along with police file and plea raised by the respondents before the learned Tribunal to the effect that the offending vehicle was lying at the garage of Bharat Automobiles at Bhopal was not raised before the police and does not form part of the police record.

6. Mr. Nikhil Majithia, Advocate was appointed as the amicus curiae who has examined the record of the police as well as the record of the learned Tribunal and he submits that it was the duty of the respondents to have summoned the owner of Bharat Automobiles to conclusively prove that the offending vehicle was lying at the garage of Bharat Automobiles at Bhopal at the time of the accident and the respondents having failed to do so,

petitioner need not summon the owner of Bharat Automobiles as a witness.

7. There is merit in the submission of the learned amicus curiae. The onus to prove that the offending vehicle was lying at the garage of Bharat Automobiles at Bhopal is on the respondents. Hence, petitioner is not required to summon the owner of the garage of Bharat Automobiles, Bhopal to disapprove something not proved.

8. The petition is dismissed. The learned Tribunal shall conduct an inquiry into the claim petition in accordance with Sections 168 and 169 of the Motor Vehicles Act, 1998. While conducting such an inquiry, it is the duty of the learned Tribunal to ascertain the truth, notwithstanding the evidence led by the parties and while doing so, the learned Tribunal shall follow such procedure as it deems fit to find out the truth to pass the award in accordance with law. Nothing stated herein shall be deemed to be an expression on the merits of this case.

9. This Court appreciates the time and effort of the learned amicus curiae in assisting this Court.

10. A copy of this order be given *dasti* to learned counsel for the parties under the signatures of the Court Master.

J.R. MIDHA, J.

NOVEMBER 30, 2009
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