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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. App. No.233 of 2008

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01.06.2010

ASHOK KUMAR KHURANA

..... Appellant

Through: Mr. Manu Sishodia & Mr. Awadhesh
Bhakta, Advocates.

Versus

LOKESHWER NATH GULATI & ORS.

..... Respondents

Through: Ms. Manjusha Wadhwa & Ms. Harshlata,
Advocates for respondent No.3.

Reserved on: 16th April, 2010

Pronounced on: June 01, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

1. This appeal has been preferred by the owner of a car bearing No.DL-1C/D-7676, involved in an accident and causing injuries to a two-wheeler driver. The main contention of the appellant is that he had given his car for repairing to a garage owner. He was not in control of the car at the time of accident and the garage owner had sent one of his boys for trial of the car, who was driving the car at the time of accident. The appellant was not aware if the car had been taken for trial. The Tribunal wrongly disbelieved the plea of the appellant on the ground that no bill for repairs was proved and the garage owner was not examined.

2. Brief facts relevant for the purpose of deciding this appeal are that on 18th September, 2004 at about 11:30 a.m., the aforesaid car owned by the appellant being driven by one Sh. Umesh Kumar, respondent No.2 herein, caused accident at Burari Road in front of Om Mandir, Dhaka Village resulting into injuries to the claimant who was

removed to hospital. The claimant filed claim petition making Sh. Umesh Kumar, driver of the car as respondent No.1, present appellant as respondent No.2 and insurance company as respondent No.3. In the written statement, the appellant did take a stand that he had left his car with the garage for repair and respondent No.2 herein was not his driver. No application was made by the appellant before the Tribunal for impleadment of garage owner as a necessary party. Neither any bill of repairs was proved nor was garage owner summoned in the witness box to support the case of the appellant.

3. Section 106 of the Evidence Act lays down in categorical terms that a fact in the special knowledge of a person is to be proved by him. The fact that the car was handed over by the appellant to the garage owner was to be proved by him and not by the claimant or insurance company. No fault can be found with the award of the Tribunal in view of the fact that the appellant, except making a self-serving statement of leaving the car to garage made no effort to prove that the car was under the control of the garage owner. It was for the appellant to prove that not he but the garage owner was the tortfeasor and liable to pay the compensation or that the insurance company was to discharge the liability in terms of the award without a qualification.

4. The contention of counsel for the appellant is that the driver, respondent No.2, admitted in his testimony that he was not engaged by the appellant and he was not the driver of the appellant. This statement of the driver coupled with the statement made by the garage owner before the police wherein he had admitted that the offending vehicle was in garage for repair, the Tribunal should have held that the tortfeasor was the garage owner and liability to recover the amount by insurance company should be from the garage owner.

5. I consider this argument is not tenable. The contract of insurance was between insurance company and the appellant. The garage owner was a stranger to this contract. The insurance company, since had no contract with the garage owner, could not be told to recover the amount from the garage owner. The insurance company had undertaken to indemnify the registered owner of the car and not the garage owner. Secondly, garage owner was not before the Tribunal as a party. The Tribunal could not have held garage owner as a tortfeasor without garage owner being a party before the Tribunal. Thirdly, even if the car was left in the garage for repairs, the garage owner was an agent of the registered owner who had authorized him to repair the car. The liability is always of the principal and not of the agent. If it is considered that garage owner was service provider and not an agent even then, the contract of service is between the owner of the car and the garage owner and if due to an act of garage owner, owner suffers any loss, it is liability of the owner to recover the amount from the garage owner. The claimant cannot be made to recover the amount from the garage owner nor can the insurance company be made to run behind garage owner for recovery since garage owner is stranger to the insurance company.

6. I, therefore, consider that under no circumstances, the Tribunal could have held the liability of the garage owner to pay the damages. However, since the appellant had left the car with garage owner for repair and due to negligence of the garage owner, the appellant is to pay to the insurance company, the appellant would have right to recover the amount from the garage owner by initiating independent proceedings.

7. I find no force in this appeal. The appeal is hereby dismissed.

SHIV NARAYAN DHINGRA J.

June 01, 2010
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