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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 05, 2010
Date of Order: April 28, 2010

+ MAC Appeal 894 of 2006

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28.04.2010

Satpal

Through: Mr. S.C. Phogat, Advocate

...Appellant

Versus

Rattan Lal Aggarwal & Ors.

Through: Mr. R.R. Ahlawat, Advocate for R-1 to 4

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

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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 judgment should be reported in Digest? | Yes. |

JUDGMENT

1. The appeal has been preferred by the appellant (respondent no.2 before the Tribunal) who has taken the plea that the Tribunal wrongly held him to be the owner of the vehicle and the Tribunal failed to look into account the testimony of the appellant wherein he had clearly stated that Mohinder Singh was the owner of the vehicle and the appellant was in service of Mohinder Singh.

2. Brief facts relevant for the purpose of deciding the present appeal are that vehicle number DNH 6978, a Maruti van got involved in an accident on 24th March, 1991 resulting into injuries to the respondent and death of one of the persons. A case under Section 279, 337, 304 A IPC was registered in this respect. The LRs of the deceased and injured persons filed a claim petition making the present appellant as one of the respondents. The appellant was

stated to be the owner of the vehicle by the claimants. In the written statement, the appellant took the stand that he was not the owner of the vehicle. The learned Tribunal, however, came to conclusion that the claimants successfully proved that the appellant was the owner of the vehicle. The investigating officer had served a notice under Section 133 of Motor Vehicles Act to the registered owner of the vehicle and in reply to this notice under Section 133, the respondent no.2 filed a reply stating that his Maruti Van was being driven by driver Dharam Pal son of Hazari Lal on 24th March, 1991 at about 6 pm. The Tribunal concluded that respondent no.2 (appellant herein) was liable to pay compensation.

3. It is argued by the counsel for the appellant that the Mohinder Singh was the registered owner as per the registration certificate of Maruti Van. A perusal of the registration certificate would show that the registered owner was M/s Ujala Leasing Company Limited and not Mohinder Singh. However, a receipt has been placed on record by the appellant showing the Mohinder Singh was paying the installments to M/s Ujala Leasing Company. His contention is that it was Mohinder Singh who was the owner of the vehicle and therefore the learned Tribunal wrongly came to conclusion that the appellant was the owner.

4. I have gone through the trial court record which shows that after the accident the investigating officer traced the ownership of the Maruti Van and came to know that Maruti Van was financed by M/s Ujala Leasing Company Limited and was being owned by the present appellant. A notice under Section 133 of the Motor Vehicles Act was served upon the appellant. The appellant in reply to the notice did not state that he was not the owner of the

vehicle or that the vehicle was being owned by Mohinder Singh. A copy of reply on record would show that the appellant stated that Maruti Van bearing number DNH 6978 was being driven by his driver Dharamvir son of Hazari Lal resident of Village Toni Khera, Delhi on 24th March 1991 around 6 pm. A perusal of written statement filed by the appellant before the Tribunal shows that in paragraph 15 of the written statement, the appellant took a bald stand that he was not the owner of the vehicle and had no connection with the vehicle whatsoever. However, the appellant did not disclose to the Court below as to in what capacity he filed reply to notice under Section 133 of the Motor Vehicles Act and informed to the police the name of his driver who was driving the vehicle if he had no connection with the vehicle. It is apparent that the appellant had not come to the Tribunal with clean hands. While in written statement he stated that he had no concern with the vehicle, in his testimony before Tribunal, he took a stand that he was in service of one Mohinder Singh son of Singh Ram and he was a property dealer. The Maruti van belonged to Mohinder Singh. His this testimony is beyond the pleadings. He had not pleaded this fact in the written statement. While in written statement he stated that he had no connection with the vehicle or the accident, in his testimony he stated that on 24th March, 1991, the van met with an accident while being driven by Dharamvir. If he had no connection with the Maruti van or the accident, he would not come to know that the van had met with an accident or was being driven by driver Dharamvir. He admitted that he went to the Police Station Narela for release of the van and then he produced the Maruti Van bearing number DNH 6978 along with the driver before the Police Station Narela. The part of his testimony that he went to police station as an employee of Mahender Singh could not be given credence because in the written statement he has nowhere stated that he was only an employee of

Mohinder Singh or it was Mohinder Singh who was the owner of the vehicle. If the appellant had been truthful and had come to the Court with clean hands, in the written statement he would have stated not only these facts but also how he produced driver of the vans gave reply to notice under Section 133 of Motor Vehicles Act. But he did not state all these facts in the written statement and his testimony being contrary to the written statement and not supported by documents could not have been looked into by the Tribunal, being beyond the pleadings. He has not produced any document to show that he was under employment of Mohinder Singh as claimed. He had also stated that he had no document or authority letter issued by Mohinder Singh to come to Police Station or to reply to notice under Section 133 of the Motor Vehicles Act. He admitted that he had given in writing to police that he was the owner of the vehicle and Dharamvir was his driver.

5. From the testimony and record, I consider that the appellant held himself out to be the owner of the vehicle before the police soon after accident. In the written statement he did not state that he was the owner of the vehicle but also did not state that he was an employee of Mohinder Singh and the vehicle was being owned by Mohinder Singh. In view of this conduct of the appellant, I consider that he was rightly held liable to pay compensation to the respondents by the Tribunal.

6. In Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & Ors. (1997) 7 SCC 481, Supreme Court had observed as under:

17. The definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. The confine the meaning of "owner" to the registered owner

only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort of committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. x x x

I, therefore consider that it is the appellant, who has to be held as owner since he himself represented that he was owner.

7. If there was any truth in the assertions of the appellant that he was not the real owner but Mohinder Singh was the real owner and he was acting on behalf of Mohinder Singh, he is at liberty to file a suit before the Civil Court to claim recovery of the amount of compensation paid by him to the claimants from Mohinder Singh. He is liable to pay compensation to claimants since he held himself out to be the owner before the police after the accident and he did not come out with the version which he gave in his testimony, in the written statement. His testimony being contrary and not supported by his pleadings cannot be read in evidence. I, therefore, dismiss this appeal. The claimants are entitled to recover the amount from the appellant as well.

April 28, 2010
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SHIV NARAYAN DHINGRA J.