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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. Appeal No.408 of 2009

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03.06.2010

SURENDER KUMAR ARORA & ANR. Appellants
Through: Mr. Pramod Kharwar & Mr. Santosh,
Advocates.

Versus

DR. MANOJ BISLA & ORS. Respondents
Through: Mr. Sanjiv Bahl & Mr. Ajay Shekhar,
Advocates for R-1 & 2.
Mr. Manoj R. Sinha, Advocate for R-3.

Reserved on: 20th May, 2010
Pronounced on: 3rd June, 2010

JUSTICE SHIV NARAYAN DHINGRA

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.

J U D G M E N T

1. This appeal has been preferred by the appellant assailing order dated 24th April, 2009 passed by the learned Tribunal dismissing the claim petition holding that the appellant failed to prove that the accident in question had taken place due to fault and negligence of respondent No.1, driver. Therefore, respondent No.1 being at no fault cannot be held liable to pay compensation and consequently respondent Nos.2 and 3 cannot be held vicariously liable to pay compensation.

2. Brief facts relevant for the purpose of deciding this petition are that the daughter of the appellants, Dr. Sunaina Arora along with her friends including Dr. Manoj Bisla, who is respondent No.1 in this case, on 30th January, 2000 was travelling in a Maruti car

bearing No.DL-6CD-8579. The deceased was occupying front seat of the car by the side of respondent No.1, who was driving the car. At about 12:30 am when the car reached near Hyatt Hotel, Ring Road, the car turned towards left, struck against the side pole and turned upside down. The impact was so forceful that Dr. Sunaina Arora received grievous injuries. She was removed to Sir Ganga Ram Hospital where she succumbed to her injuries. The matter was reported to the police. An FIR was recorded, however, no criminal proceedings were initiated against respondent No.1 since appellant No.1, father of the deceased, told the police that he wanted no action against respondent No.1 as respondent No.1 was a colleague and friend of Dr. Sunaina Arora.

3. The claim petition was filed under Sections 166/140 of Motor Vehicles Act alleging negligence on the part of respondent No.1 in driving the car, seeking a compensation of Rs.25 lac. Surprisingly despite filing claim petition under Section 166 of Motor Vehicles Act, the appellant in his affidavit by way of evidence did not state a word about negligence of respondent No.1 in driving the car. His affidavit only states that his daughter was in car No.DL-6CD-8579 being driven by respondent No.1 and she died in a road accident. It is nowhere stated that the car was being driven in a rash and negligent manner by respondent No.1 or the accident took place due to negligent driving of respondent No.1. Respondent No.1 in his affidavit denied that the car was being driven by him in a rash and negligent manner. He also denied the suggestion of driving the car at a fast speed. The learned Tribunal after going through the evidence led by the appellant before the Tribunal observed that the appellant had admitted that he made a statement to the police at the time of accident that he did not want any action against respondent No.1. The appellant did not depose before the court that the accident was caused because of rash and negligent driving of car by respondent No.1 nor any other

witness was produced to show that the car was being driven in a rash and negligent manner by respondent No.1. Under these circumstances, respondent No.1 could not be held responsible for causing the accident by his negligence. It was also observed that the criminal case was also closed by the police in view of statement made by the appellant.

4. It is argued by counsel for the appellant that the court should have taken circumstances of accident into consideration. The manner in which the car had struck against the pole and then turned upside down showed that the car was being driven rashly and negligently by respondent No.1.

5. I consider that this argument does not lie in the mouth of the appellant. The appellant cannot approbate or reprobate simultaneously. It is apparent that the appellant on one hand has soft corner for respondent No.1 did not even say in his affidavit that the circumstances showed that the car was being driven negligently by respondent No.1. He made statement before the police that he does not want any action against respondent No.1 since respondent No.1 was a friend of the deceased and a fellow doctor but the appellant wants compensation to be paid on the basis of that respondent No.1 was negligent, without proving the negligence of respondent No.1. I consider that the appellant cannot be allowed to take different stands at different proceedings, nor can claim compensation without even alleging tort against respondent No.1. The appellant had sufficient opportunity to prove negligence of respondent No.1 before the Tribunal. The appellant could have examined other occupants of the car. There were four occupants of the car at the time of accident and apart from driver and deceased, there were two more occupants. One of them was Dr. Vikas Aggarwal. None of the occupants has deposed that there was negligence of respondent No.1 in driving the car.

6. In view of this I consider that decision of the Tribunal that the appellant failed to prove that respondent No.1 was negligent in driving the car was appropriate decision.

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

SHIV NARAYAN DHINGRA J.

JUNE 03, 2010
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