

UNREPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.116/2009

MADAN LAL

..... Appellant

Through: Mr. Yogender Vashisth, Advocate for
the appellant.

versus

SANGEETA VERMA & ORS.

..... Respondents

Through: Mr. K. L. Bhandari, Advocate for the
respondents No.1 to 5.

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Date of Decision : August 01, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

JUDGMENT

: REVA KHETRAPAL, J.

1. By way of this appeal, the appellant seeks to assail the judgment and award of the Motor Accident Claims Tribunal dated 18.10.2008.
2. At the outset, the facts relevant for the decision of the appeal

may be briefly delineated. On 06.06.1996 at about 11:00 p.m., one Shri Anil Kumar Verma was going to his house from Munirka on his scooter bearing No. DL-4-SG-7033. When he reached near the Dhaula Kuan Petrol Pump via Ring Road, the offending car bearing registration No. DDQ-7388 came from Dhaula Kuan Crossing towards Gurgaon at a very fast speed and hit the scooter of the deceased from behind. Resultantly, the deceased sustained grievous injuries to which he succumbed. A claim petition was filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 for the grant of compensation by his widow, two minor children and parents, wherein an award of ₹ 18,00,000/- was prayed for. The Claims Tribunal, after considering the evidence adduced by the parties, held that the accident was the outcome of the rash and negligent driving of the offending vehicle being Maruti Car bearing No. DDQ-7388 and held the appellant, who was the owner of the offending vehicle, in the absence of the said offending vehicle being insured, liable to pay compensation to the legal heirs of the deceased in the sum of ₹ 5,72,383/- with interest thereon at the rate of 7.5%

per annum from the date of the filing of the petition till the date of realization.

3. Aggrieved by the aforesaid award, the present appeal has been preferred by the appellant for setting aside the impugned award on the ground that no accident had taken place involving the vehicle owned by him being Maruti Car bearing No. DDQ-7388, as was also stated by him in the written statement filed by him before the Claims Tribunal.

4. Mr. Yogender Vashisth, the learned counsel for the appellant, contended that the Claims Tribunal failed to take into consideration the fact that the car of the appellant was out of order, it had a defective engine and was not in working condition; it was in the garage for the last two years, it had no battery and was not roadworthy. According to the learned counsel, the learned Tribunal also failed to take note of the fact that as per the DD entry recorded by the police, it was an Ambassador Car bearing No. DDQ-7388 which had hit the scooter of the deceased, whereas the car of the appellant bearing No. DDQ-7388 was a Maruti car. It was precisely

for this reason that the appellant, though challaned vide FIR No.280/1996 under Sections 279/304-A IPC registered at Police Station Delhi Cantt, was subsequently acquitted in the said criminal case by the Metropolitan Magistrate, New Delhi. It was also contended that the Tribunal, in passing the impugned award, lost sight of the fact that the police had thoroughly investigated the matter and had found no eyewitness of the alleged accident, however, the claimants in the course of their evidence produced PW2-Sh. Sanjay, who claimed to be an eyewitness of the accident. In such circumstances, the Tribunal ought to have held that in view of the fact that the statement of this witness was not available on the police record and he was not cited as a witness in the criminal case, the evidence of the witness was not trustworthy.

5. The aforesaid contentions of the learned counsel for the appellant were sought to be rebutted by the counsel for the respondents by relying upon the findings arrived at by the learned Claims Tribunal.

6. After hearing the learned counsel for the parties and scrutinizing the records, this court is inclined to agree with and uphold the findings of the learned Claims Tribunal for the reasons set out hereinbelow.

7. In this case, the DD entry bearing No. 46 (Exhibit PW1/J) was recorded by Police Post, Dhaula Kuan on telephonic information received regarding the accident of an Ambassador car No. DDQ 7388 with scooter No. DL 4SG 7033. It is not in dispute that the number recorded in the DD entry is the number of the car of the appellant. The only controversy is with regard to the make of the car. As noted by the learned Claims Tribunal, the person who had reported about the accident may not necessarily be aware of the make of the car. The person on whose information the DD entry was recorded has not been examined by the appellant to prove that the informant was aware about the make of the offending car and he had correctly reported the same. There is also no evidence forthcoming on the record to prove that there is an Ambassador car registered as DDQ 7388 and as a matter of fact there is no controversy about the fact that there cannot

be two cars of different make with the same registration number. Therefore, what is important is the number of the car and not the make of the car. If the number of the car is correct then the make of the car becomes irrelevant.

8. Judicial notice may also be taken of the fact that the DD entries recorded over the wireless set by police officials are not always correctly recorded in their entirety. More often than not the information relayed over the wireless is not clearly audible and therefore not infrequently the number of the car or its colour or its make is not accurately recorded. This is apart from the fact that the informants sometimes do not relay the information correctly to the wireless operators or the wireless operators do not catch the information correctly.

9. As for the plea of the appellant that his car was out of order as it had a defective engine and no battery and it had been in the garage for the last two years, the appellant has not produced an iota of evidence to support his aforesaid defence. It was for him to produce the garage owner in the witness box to state that his car was lying at

the garage. It was for him to prove that his car had a defective engine and no battery, but apart from his bald statement there is nothing on record to substantiate the same. I find from the record that a notice under Section 133 of the Motor Vehicles Act was given to the appellant by the Investigating Officer on 25th June, 1996 and thereafter again on 29th August, 1996. Had the appellant produced his car on receipt of the notice dated 25th June, 1996 and a mechanical inspection report of the car to the effect that the car was not roadworthy, there might have been something on the record to support the case of the appellant. As things stand, there is nothing on record to show that the car of the appellant was not on the road but in a garage. Significantly also, the learned Tribunal has noted that during the course of arguments it was contended before the Tribunal that the Maruti car No. DDQ 7388 of the appellant was a new car, which was denied by the appellant and therefore, the learned Tribunal had directed the appellant to produce the Registration Certificate of the car so that the court could become aware of the year of the manufacture of the car. But despite taking opportunities for the

aforesaid, the appellant did not produce the copy of the Registration Certificate on the pretext that he was unable to trace out the same. This, in my view, also lends credence to the fact that it was the appellant's car, which met with the accident and in all probability it was a comparatively new car with no mechanical defect.

10. Another significant aspect of the matter is that the eyewitness PW2 – Sanjay categorically deposed that he had witnessed the accident while waiting for a bus at the Dhaula Kuan Bus Stand, and had clearly seen that the accident had taken place with a Maruti Car bearing registration No. DDQ 7388, which came from the Dhaula Kuan roundabout at a fast speed and hit the scooter of the deceased from behind. He further deposed that because of the impact, the scooterist fell down on the road with the scooter and received injuries. The driver of the car stopped his car for a moment and then ran away from the spot. The aforesaid testimony of PW2 – Sanjay remained unshaken after cross-examination. In his cross-examination, PW2 – Sanjay categorically stated that the police had recorded his statement on the spot. He also stated that he understood the difference between

a Maruti car and an Ambassador car and denied the suggestion that the accident had taken place with an Ambassador car. In further cross-examination, he stated that he had seen the driver of the offending vehicle, but was not called by the police for his identification either in the Police Station or in jail or before any Magistrate.

11. The testimony of PW2 – Sanjay has been rightly believed by the learned Tribunal to be creditworthy. The only ground left for discarding his testimony, which is sought to be pressed into service by the learned counsel for the appellant, is that his name is not mentioned in the list of witnesses set out in the challan. This to me does not appear to be a cogent reason for discarding his testimony. Simply because the Investigating Officer has not cited him as a prosecution witness does not discredit his testimony at all. The appellant has failed to produce any evidence on record to show that PW2 – Sanjay was in any way related to the deceased or the respondents or that he had any interest in the case of the respondents or any enmity against the appellant to depose against him. On the

contrary, the challan shows that the Investigating Officer had fixed the test identification parade of the driver of the offending vehicle, that is the appellant in this case, but the appellant refused to participate in the said test identification parade. The only reason for refusal appears to be that the appellant had an apprehension in his mind that in the course of the proceedings he would be identified by a witness of the accident.

12. It also emerges from the record that the appellant has faced criminal trial for the offences under Sections 279/304A IPC. Much emphasis has been laid by the learned counsel for the appellant on the fact that the appellant has been acquitted of the said charges. Relying upon the said acquittal, it is contended that the involvement of the appellant in the accident does not stand proved. A bare glance at a judgment of the learned Metropolitan Magistrate dated 28.08.2002 acquitting the accused, however, shows that the appellant was acquitted for want of an eye-witness account of the accident and dearth of evidence against him. In the instant case, however, it stands proved from the testimony of PW2 – Sanjay that the appellant had

caused the accidental death of Anil Kumar Verma with his Maruti car bearing registration No. DDQ 7388. As stated above, the testimony of this witness has withstood the test of cross-examination. No cogent reason has been assigned for disbelieving his testimony. Merely because he has not been cited as a prosecution witness by the police is not reason enough to hold that his testimony is unworthy of credence, more so, as it is not established on record that he was either a partisan or an interested witness. Thus, the inescapable conclusion is that it stands proved on record that the offending vehicle, that is Maruti car No.DDQ 7388, driven by the appellant was involved in the accident and that the accident was the outcome of rash and negligent driving of the appellant. Admittedly, the appellant, who is the owner of the offending vehicle did not care to get the vehicle insured and, therefore, must bear the brunt of paying compensation to the legal representatives of the deceased victim.

13. In view of the aforesaid, I have no hesitation in holding that the appellant is liable to pay the compensation awarded to the legal representatives of the deceased by the learned Tribunal. The manner

of computation of the said compensation by the learned Tribunal has not been challenged before me. Consequently, the award of the Tribunal is upheld. The appeal fails and is dismissed. The interim order staying the execution proceedings is hereby vacated.

14. The records of the learned Tribunal be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

**August 01, 2011
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