

UNREPORTED

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

+ MAC. APP. 349/2004

RAVINDRA MALHOTRA

..... Appellant

**Through: Ms. Sonali Malhotra and
Mr. Amit Sanduja, Advocates**

versus

VIJENDER SINGH & ANR.

..... Respondents

**Through: Ms. Arati Mahajan Shedha,
Advocate**

% Date of Decision : January 20, 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?**

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

By way of this appeal, the appellant seeks to assail the judgment dated 17th February, 2004 passed by the Additional Sessions Judge in MACT No.101/2002 whereby and whereunder the learned Sessions Judge has opined that the appellant had not been able to prove that he had suffered injuries due to rash and negligent

driving of vehicle No. DEP 9343 driven by the respondent No.1 and owned by the respondent No.2, the Delhi Transport Corporation, and there was no evidence on record to link the respondent No.1 – driver and Bus No. DEP 9343 owned by the respondent No.2 with the alleged accident.

2. Briefly stated, the facts of the case are that the appellant had filed a claim petition under Section 166 and 140 of the Motor Vehicles Act, 1988 for grant of compensation for the injuries sustained by him in a motor vehicular accident. The case of the appellant was that while he was waiting for a bus at Gurudwara Bangla Sahib bus stop to go to the ITO, Bus No. DEP 9343 plying on route No.330 came and stopped at the bus stop, behind another bus which was already stationary at the bus stop. The appellant tried to board the offending bus and had gripped the iron rod of the bus, but the driver started the bus with the big jerk without ensuring that the passenger had boarded the bus. Resultantly, the appellant was dragged with the bus and pressed between the offending bus, i.e., Bus No. DEP 9343 and the stationary bus standing ahead of it. He

suffered compound fracture of right forearm, fracture of left clavical bones, dislocation of ribs bones, defacement of face and right ear and other multiple injuries on various parts of the body, which rendered him permanently handicapped. He remained under treatment from AIIMS hospital over a protracted period of time and incurred considerable expense on his treatment. The claim petition was accordingly preferred by him on 29th August, 1995.

3. The respondents No.1 and 2 filed a joint written statement taking the preliminary objection that the Bus No. DEP 9343 was not at all involved in any accident and no accident had taken place with the said bus on the aforesaid day and hence the respondents were not liable to pay compensation. On the pleadings of the parties, the following issues were framed for consideration:

“(i) Whether the petitioner Ravinder Malhotra received injuries in a road accident when he was hit by DTC bus No. DEP 9343 being driven rashly and negligently by R1 and owned by R2? OPP

(ii) Whether the respondent are not liable in view of the preliminary objections taken by them in their written statement? OPR

(iii) *Whether the petitioner is entitled to compensation? If so, to what amount and from whom? OPP*
(iv) *Relief.”*

4. The appellant examined himself as PW1 while the respondents adduced the evidence of RW1, the driver of the offending bus. RW2 Shri Harish Chand, an official of the respondent No.2 was also examined.

5. The learned trial court after hearing the parties and noting that it was the case of the petitioner in the claim petition filed by him that the offending bus was Bus No. DEP 9343 plying on route No.330, noted as under:

“The respondents have denied the factum of accident alleged to be caused by bus DEP 9343. While appearing as PW1, Petitioner has reiterated the above mentioned facts. In cross-examination, he admitted that Ex.PW1/D is the copy of the FIR registered on his statement. He has stated that he told the police that the bus route number was 330 but he does not know under what circumstances it was written as 320 in his statement and FIR. He came to know for the first time in February 1995 that the number had been mentioned wrongly but the police officials expressed their helplessness to rectify the same so he made an oral complaint to the

concerned DCP and necessary rectification was carried out.

(c) As per PW1, registration number of the bus was verified by him from Patparganj Depot. The witness was not aware about the destination of the bus and he had stated that he had to go only up to ITO. As per this witness, since he was in severe pains at AIIMS so he was unable to notice the difference between route No.320 and 330 in his statement. He had denied the suggestion that no accident had taken place with bus No. DEP 9343 plying on route No.330.

(d) No other eye witness has been examined to prove the factum of accident with bus No. DEP 9343. The respondents have examined RW1 who was the driver of the Bus No. DEP 9343. He has stated that he was plying the said vehicle on route No.330 which started at about 11.30 a.m. from Kendriya Terminal to Shalimar Park. No accident had occurred with the said bus on the said date. He came to know only on 8.3.95 regarding the alleged accident and he had given his explanation to Depot Manager denying the factum of the accident. As per his version, he was falsely implicated by the police in case FIR No.267/94 Police Station Parliament Street and was acquitted by the Trial Court vide Judgment Ex.RW1/B. The Conductor of the bus had already died.

(e) In cross examination RW1 admitted that the route No.330 passes through Gurudwara Bangla Sahib Ashok Road, New Delhi. He has further stated that it takes about 5 to 10 minutes from Kendriya Terminal to reach Bangla Sahib bus stand. He denied that any such accident

took place. He has also denied that the petitioner was struck with another stationary bus causing him various injuries.

(f) I have gone through the FIR Ex.PW1/D, wherein the offending vehicle has been mentioned as DTC route No.320 and the time of the accident has been mentioned as 12.00 noon. This FIR was lodged on the basis of DD No.11A dated 1.9.94 recorded at 4.40 p.m. i.e., soon after the accident. No correction had been made in the FIR in respect of route number at any stage because trial before the Criminal Court had also taken place against the present respondent No.1 on the basis that bus route No. was 320 and he was acquitted in the said trial on the ground that the Investigating Officer had failed to explain that how he reached to the conclusion that the respondent No.1 was the offender. The contradiction regarding bus route number in the statement of present petitioner recorded in the court and FIR had gone in favour of the accused resulting in his acquittal.

(g) In the MLC Ex.PW1/E, it is mentioned that the petitioner was taken to the hospital by his brother Sh. Bipin Malhotra, meaning thereby the said Sh. Bipin Malhotra was with the petitioner at the time of the accident. This material witness has not been examined in this case due to the reasons best known to the petitioner. Sh. Bipin Malhotra was the only available eye witness to the accident.

(h) As far as registration number of the bus is concerned, the petitioner has himself stated that he got the registration number from the Patparganj Depot on making inquiries,

meaning thereby that the registration number was not noted down at the time of the accident. Respondent No.1 has stated in his evidence that he had started the trip at 11.30 a.m. and it generally takes 5 to 10 minutes to reach Gurudwara Bangla Sahib from Kendriya Terminal. It means that the bus No. DEP 9343, driven by respondent No.1 on route No.330, had reached bus stand Gurudwara Bangla Sahib between 11.35 to 11.40 a.m. whereas the time of the accident has been mentioned as 12.00 noon. Under these circumstances, the petitioner has not been able to prove that how this bus was at the bus stand Gurudwara Bangla Sahib at 12.00 noon, since it had left Kendriya Terminal at 11.30 a.m. No question was asked in the cross examination in this regard. Even a suggestion has not been made to this witness that he had not started the trip at 11.30 a.m. and had started the same much later from Kendriya Terminal so that the bus was at Bangla Sahib bus stand at 12.00 noon i.e. at the time of the accident as narrated by PW1.

(i) In view of the above contradictions in the evidence of the petitioner and facts stated herein above, I am of the opinion that the petitioner has not been able to prove that he had suffered injuries due to rash and negligent driving of vehicle No. DEP 9343 by respondent No.1, which is owned by respondent No.2. There is no evidence on record to link Respondent No.1 Driver and Bus No. DEP 9343 owned by Respondent No.2 with the alleged accident. Issue No.1 is decided against the petitioner.”

6. In view of the aforesaid findings rendered on Issue No.1, the claim petition of the appellant was dismissed. Aggrieved from the aforesaid dismissal, the present appeal has been filed, on which I have heard Ms. Sonali Malhotra, the learned counsel for the appellant and Ms. Arati Mahajan Shedha, the learned counsel for the Delhi Transport Corporation. Ms. Sonali Malhotra, the learned counsel for the appellant in the first instance contended that though in the FIR the route number of the offending bus was wrongly mentioned as route No.320 instead of route No.330 by the Investigating Officer, it was the case of the appellant that he had told the police that the bus route number was 330 and being in considerable pain at the time of the registration of the FIR on account of the injuries sustained by him, he did not know how route No.320 was recorded in the FIR. However, on receipt of the FIR, a representation was made by the appellant to the Deputy Commissioner of Police for correction of the route number which was duly corrected as route No.330. This fact was apparent from a perusal of the charge-sheet where Route No.330 is

mentioned at several places and there is no mention of route No.320 at all.

7. Ms. Malhotra, the learned counsel for the appellant also invited my attention to the duty slip of the respondent No.1 Driver, which appears in the trial court record. The said duty slip, which is dated 01.09.1994, certifies that the respondent No.1 – driver, Vijender Singh was on duty on Bus No. DEP 9343, plying at route No.330. Her contention is that both the charge-sheet and the duty slip have been completely ignored by the learned trial court while rendering its finding on Issue No.1 and instead the trial court had been swayed by the judgment of the criminal court acquitting the respondent No.1 from all criminal liability on the ground of confusion in the route numbers. She contends that the judgment of the criminal court is not binding on the civil court leave alone the Motor Accident Claims Tribunal and hence there was no justification for the learned trial court to have held on the basis of the judgment of the criminal court that there was no involvement of the respondent No.1 in the accident.

8. The learned counsel for the appellant further points out that in the course of his cross-examination RW1 Vijender Singh Bhatti had admitted that he was the driver of DTC bus bearing No. DEP 9343 plying on route No.330, and had undertaken a trip on the aforesaid route at 11.30 a.m. on the morning of 01.09.1994, on which day the appellant met with the accident at 12.00 Noon. The learned counsel has also drawn my attention to the application for release of the bus filed by the Delhi Transport Corporation on 8th March, 1995 wherein the Delhi Transport Corporation has clearly stated that the said bus was taken into police custody on account of an accident involving Bus No. DEP 9343.

9. Ms. Arati Mahajn, the learned counsel for the Delhi Transport Corporation, on the other hand, sought to support the judgment of the learned trial court on the ground that the respondent No.1 had been acquitted in the criminal case and that as per the FIR the route number was recorded as 320 and not as 330. She submitted that there was no evidence on record to link the respondent No.1 Driver with Bus No.

DEP 9343 owned by the Delhi Transport Corporation, the respondent No.2 herein.

10. Having heard the learned counsel for the parties and gone through the evidence on record, I am of the view that the trial court was not justified in throwing out the petition on the ground that the appellant had failed to establish that the respondent No.1 – driver was not the driver of the offending bus at the time of the accident. There is no dispute to the fact that DTC Bus No. DEP 9343 was being driven by the respondent No.1 – driver at 11.30 a.m. on route No.330 on the day of the accident, i.e., 01.09.1994 and the accident took place immediately thereafter, i.e., at 12.00 noon. There is also no dispute to the fact that in the charge-sheet, the route number has been specifically corrected to read as route No.330. Apart from this, I find from the record that no evidence has been produced by the Delhi Transport Corporation to show which bus of the Delhi Transport Corporation had caused the accident on the day in question. The Delhi Transport Corporation was in possession of all the duty registers and records and could have easily produced the same to bear

out its contention that DTC Bus No. DEP 9343 driven by the respondent No.1 on route No.330 was not the offending bus. It is settled law that where a party fails to produce or withholds evidence in its possession which is material for deciding the controversy between the parties, adverse inference must be drawn against the said party.

11. It is also trite that the decision in a criminal case resulting in the acquittal of the accused cannot be used for throwing out a claim petition filed under the Motor Vehicles Act and as a matter of fact this proposition was not even sought to be disputed at the time of hearing.

12. In view of the aforesaid, the appeal succeeds. The matter is remanded back to the trial court for decision of the remaining issues, i.e., Issues No.2 to 4. Parties are directed to appear before the trial court on 14th February, 2011. There will be no order as to costs. Record be sent back to the Court concerned.

13. The appeal stands disposed of accordingly.

REVA KHETRAPAL
(JUDGE)

January 20, 2011
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