

UNREPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAC. APP. 60/2007**

NARESH KUMAR KATARIA Appellant
Through: Mr. H.R. Jha, Advocate
versus
RAKESH & ORS. Respondents
Through: Mr. Manoj R. Sinha, Advocate
for the respondent No.3

% Date of Decision : January 19, 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.

CM No.1431/2007

This is an application praying for condonation of delay in filing the appeal. In view of the ground given in the application, the delay is condoned.

The application stands disposed of.

MAC. APP. 60/2007

1. This appeal is directed against the judgment dated 21.09.2006 passed by the Motor Accident Claims Tribunal, Delhi dismissing the

claim petition of the appellant seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 against the respondents.

2. The facts leading to the filing of the claim petition in a nutshell are that the appellant Naresh Kumar Kataria sustained grievous injuries in a road accident, which took place on 09.02.2004, within the jurisdiction of Police Station Bawana, when he was hit by the offending motorcycle bearing No.DL-8SW-7876. Allegedly, the said motorcycle was being driven by the respondent No.1 – Rakesh Kumar, was owned by the respondent No.2 – Krishan Pal and was insured with the respondent No.3 – Insurance Company. The respondents No.1 and 2 in the written statement filed by them to the claim petition however denied the factum of accident, though the respondent No.3 admitted that motorcycle owned by the respondent No.2 was insured with it from 06.07.2003 to 05.07.2004.

3. After the parties had marshalled their respective evidence, the Motor Accident Claims Tribunal dismissed the petition on the ground that the appellant had failed to establish that the accident was caused by the respondent No.1 while driving motorcycle No.DL-8SW-7876.

Aggrieved against the dismissal of his claim petition, the appellant has preferred the present appeal, on which I have heard his counsel Mr. H.R. Jha, Advocate as well as the counsel for the respondent No.3 – Insurance Company, Mr. Manoj R. Sinha, Advocate.

4. At the outset, Mr. H.R. Jha, the counsel for the appellant pointed out that initially in Column No.10 of the claim petition, the number of the motorcycle was correctly set out as DL-8SW-7876, but by an inadvertent typographical error in Column No.14 thereof, the number of the motorcycle was mentioned as DL-8SW-8776. This inadvertent error had been corrected by moving an amendment application, which amendment application was allowed by the Motor Accident Claims Tribunal. He submitted that in the aforesaid scenario, the observation made by the Tribunal that after about a year, changes were made in the registration number of the vehicle was *stricto sensu* not correct, inasmuch as though the vehicle number was amended in Column No.14, in Column No.10 of the very same claim petition, the number had been correctly mentioned as DL-8SW-7876 in the first instance. This fact was altogether lost sight of by the

Tribunal. He further submitted that the outright denial of the respondents No.1 and 2 of the involvement of their motorcycle in the accident could not stand scrutiny in view of the oral and documentary evidence on record.

5. Mr. Jha pointed out that though the registration number of the offending vehicle viz., No.DL-8SW-7876 was not mentioned in the First Information Report, the same finds mention in the seizure memo of the motorcycle and in the superdiginama, on the basis of which the motorcycle was released to the respondent No.2. He has also drawn the attention of this Court to the notice under Section 133 of the Motor Vehicles Act dated 10.02.2004, which refers to the number of the offending vehicle as DL-8SW-7876, and bears out the stand of the appellant that on 09.02.2004 itself the number of the offending vehicle was made known to the police. The mechanical inspection report also shows that the mechanical inspection of motorcycle No. DL-8SW-7876 had been carried out.

6. Mr. Manoj R. Sinha, the learned counsel for the respondent No.3, on the other hand, contended that the Tribunal had rightly held

that the appellant had failed to establish that the accident was caused by the respondent No.1 while driving motorcycle No.DL-8SW-7876. He submitted that in the initial statement made by the appellant to the investigating officer, he simply mentioned that his vehicle was hit by a motorcycle and he fell down and sustained injuries. The number of the motorcycle was not given by him to the investigating officer nor in fact he produced in the witness-box the person who had noted down the registration number of the offending vehicle. Reference was also made by Mr. Sinha, the learned counsel for the respondent No.3 – Insurance Company to the testimony of RW-1 Rakesh Kumar, who claimed that he had never driven motorcycle No. DL-8SW-8776 or DL-8SW-7876 on 09.02.2004. Mr. Sinha also relied upon the testimony of RW-2 Krishan Pal (the respondent No.2 herein), who claimed that he is the owner of motorcycle No. DL-8SW-8776 and he did not know anything about motorcycle No. DL-8SW-7876. Finally, Mr. Sinha contended that the mechanical inspection report of the motorcycle No. DL-8SW-7876 clearly showed that there was no sign of any damage on the motorcycle and this, as observed by the

Tribunal, raises a doubt on the version of the appellant regarding the involvement of the aforesaid motorcycle in the accident.

7. Having heard the learned counsel for the parties and gone through the evidence on record, I am of the view that there is clear evidence which conclusively proves that motorcycle No. DL-8SW-7876 was the motorcycle which had caused the accident and which, on the day of the accident, i.e., on 09.02.2004, was being driven by the respondent No.1 and was owned by the respondent No.2. Though RW-2 Krishan Pal in the course of his testimony stated that he was the owner of motorcycle No. DL-8SW-8776, the aforesaid statement made by him on oath is clearly belied by the registration certificate of the said motorcycle, which shows that the respondent No.2 is in fact the owner of motorcycle No. DL-8SW-7876. This fact is corroborated by the endorsement made and signed by the respondent No.2 on the notice under Section 133 of the Motor Vehicles Act dated 10th February, 2004 issued to the respondent No.2 for production of motorcycle No. DL-8SW-7876 and the driver of the said motorcycle, upon which the respondent No.2 has made an endorsement that on

09.02.2004 the motorcycle in his name bearing No. DL-8SW-7876 was being driven by Rakesh, son of Anoop, who was a resident of Ishwar Colony and who caused the accident and that he (Krishan Pal) would attempt to produce him in the police station on 13.02.2004. The aforesaid endorsement is duly signed by the respondent No.2 Krishan Pal and is dated 10.02.2004.

8. As regards the reliance placed on the mechanical inspection report by the learned counsel for the respondent No.3, the same is wholly misplaced. A bare glance at the said mechanical inspection report of motorcycle No. DL-8SW-7876 shows that the mechanical inspection of the said motorcycle was carried out on 18.03.2004, i.e., more than a month after the accident had taken place. There is, on record, in this regard, an application made by the Investigating Officer, Samunder Singh of Police Station Bawana to the Court of the Metropolitan Magistrate, for legal action to be taken against the accused for non-production of the motorcycle No. DL-8SW-7876, which is dated 11.03.2004. It need hardly be stated that during the period intervening 09.02.2004 to 11.03.2004, the respondent No.1

and the respondent No.2 had ample time to have the motorcycle repaired, and thus the Motor Accident Claims Tribunal ought not to have relied upon the mechanical inspection report in the instant case.

9. For the aforesaid reasons, I am of the view that there is overwhelming evidence on record which conclusively establishes the involvement of motorcycle No. DL-8SW-7876 in the accident which resulted in the appellant sustaining grievous injuries. The order of the Tribunal holding otherwise is, therefore, unsustainable and is set aside. The appeal is, therefore, allowed with the direction to send back the records to the learned Tribunal. The claim petition is remanded back to the learned Tribunal to be decided afresh on its merits. Notice shall be issued by the Tribunal to the counsel for the parties for appearance before it on a convenient date for further proceedings.

**REVA KHETRAPAL
(JUDGE)**

January 19, 2011
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