

4
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP.No.686-87/2005

%

Date of decision: 2nd December, 2011

HARI OM GUPTA & ANR. Appellants

Through : Mr. R.C. Pathak and
Ms. Neelima Raj, Advs.

versus

JAI KISHAN & ORS. Respondents

Through : Mr. Rajesh K. Sharma, Adv.
for R-1.
Mr. M.K. Tiwari, Adv. for R-3.
S.I. Lalit Kumar, P.S. Subhash
Palace, Delhi.

**CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT (ORAL)

CM No.21609/2011

1. The appellants are seeking permission to place on record the post-mortem report and the vehicle mechanical inspection report on record.
2. The application is allowed and the said documents are taken on record.

MAC. APP. 686/2005

1. The appellants have challenged the judgment of the Tribunal whereby the claim petition relating to the death of their son, Satender Gupta was dismissed.

2. On 28th December, 2002 at about 8:00 am, the deceased,
MAC.APP.No.686-87/2005

Satender Gupta was going on his bicycle towards Britannia Chowk near E-Block Park, Shakoorpur, Delhi when he was hit by car No.CH-10-T-0014 alleged to have been driven rashly and negligently by respondent No.1. The deceased was survived by his parents who filed the claim petition before the Claims Tribunal. The offending vehicle was driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3 at the time of the accident.

3. Appellant No.1 appeared in the witness box as PW-1 and deposed that his son died in a motor accident on 28th December, 2002 leaving behind the parents. PW-1 further deposed that the deceased was unmarried at the time of the accident and was earning ₹3,000/- per month as salary and ₹1,500/- per month from the supply of butter.

4. The Investigating Officer of Delhi Police appeared in the witness box as PW-2 and deposed that D.D. No.3A was registered in respect of the above accident whereupon he reached the spot and found the bicycle and Maruti Car No. CH-10-T-0014 in accidental condition. PW-2 further deposed that he met the eye-witness, Rajbir and the driver, Jai Kishan of the Maruti Car on the spot and he arrested the driver from the spot. The Rukka prepared by PW-2 was proved as Ex.PW2/1. The site plan prepared by PW-2 was proved as Ex.PW2/2. The

seizure memo of the car was proved as Ex.PW2/3. The mechanical inspection report was proved as Ex.PW2/4. The request for mechanical inspection was proved as Ex.PW2/5.

5. Mr. Rajbir Rathore, eye-witness of the accident appeared in the witness box as PW-3 and deposed that he witnessed the accident and apprehended the car driver. He further deposed that he handed over the driver to the police who had arrived on the spot. The police took the injured boy to the hospital. The statement of the eye-witness given to the police on the basis of which the FIR was registered was proved as Ex.PW2/1.

6. The Claims Tribunal dismissed the claim petition on the ground that the MLC as well as post-mortem report have not been placed on record to prove that Satender Gupta died due to the injuries suffered in the motor accident and, therefore, there was no linking evidence between the injuries sustained in the accident and the death of the deceased.

7. Sub-Inspector, Lalit Kumar from P.S. Subhash Palace is present in Court along with record of FIR No.938/2002 and he submits that the criminal case relating to the said FIR is pending against the driver, Jai Kishan before the concerned Metropolitan Magistrate. The record produced by the Sub-Inspector contains the relevant documents relating to the death of the deceased, Satender Gupta in the accident dated

28th December, 2002. The photocopy of the record produced by the Sub-Inspector of Delhi Police is taken on record. Copy of the same has been handed over to learned counsel for the appellants as well as respondent No.1.

8. In the case of **Mayur Arora v. Amit, 2011 (1) TAC 878**, this Court held as under:-

“10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.”

9. The record of the Claims Tribunal reveals that the Claims Tribunal has not conducted any inquiry into the matter as contemplated by the Motor Vehicles Act. In that view of the matter, the impugned judgment of the Claims Tribunal is liable to be set aside.

10. In the facts and circumstances of this case, the appeal is allowed and the impugned award of the Claims Tribunal is set aside. The claim petition of the appellants is remanded back to the Claims Tribunal for conducting an inquiry under Section 168 in terms of the judgment of this Court in **Mayur Arora (supra)**. Considering that this case relates to the death of a 22 year old boy on 28th December, 2002, the Claims Tribunal is directed to complete the inquiry within a period of six months.

11. List before the Claims Tribunal on 20th December, 2011. Sub-Inspector, Lalit Kumar of Delhi Police shall appear before the Claims Tribunal on 20th December, 2011 and he shall file the Detailed Information Report under Section 158(6) of the Motor Vehicles Act along with all the supporting documents before the Claims Tribunal on the said date.

12. The record of the Claims Tribunal be returned back forthwith. The copy of the record of FIR No.938/2002 produced by the Sub-Inspector of Delhi Police today before this Court be sent to the Claims Tribunal. The certified copies of the post-

mortem report and the mechanical inspection report filed by the appellant along with CM No.21609/2011 be also sent to the Claims Tribunal after retaining a photocopy thereof.

13. Copy of this order be given 'Dasti' to learned counsels for both the parties as well as to the Sub-Inspector of Delhi Police under signature of Court Master.

DECEMBER 02, 2011

aj

J.R. MIDHA, J