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

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Judgment delivered on: 17th February, 2014

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MAC.APP. 880/2006

DAYA NAND

..... Appellant

Represented by: Mr.Purushottam Kumar,
Advocate.

Versus

SH. ROMAL & ORS.

..... Respondents

Represented by: Mr.Dilip Singh, Advocate for
Respondent Nos. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present appeal, the appellant has assailed the impugned award dated 27.07.2006, whereby the learned Tribunal has granted compensation for a sum of Rs.6,66,500/- with interest at the rate of 8% *per annum* from the date of filing the claim petition till realization of the amount.

2. It is important to note that on the date of the accident, respondent No.5 was the registered owner of the offending vehicle, however, appellant Daya Nand admitted that on the date of the accident he was the actual owner of the tractor and was in possession of the alleged offending vehicle.

3. The present appeal has been filed mainly on the ground that offending vehicle was not involved in the accident. Police had filed the chargesheet against the driver of the offending vehicle solely on the testimony of the planted witness. However, the said witness had neither seen the accident nor noted the number of the offending vehicle nor identified the driver of the offending vehicle.

4. Brief facts of the case are that on 03.10.2003 at about 9.37 pm, when deceased Baljit Singh was coming on foot to his house after his duty and was on the left side of the road and reached Ochandi Village near Union Bank of India, suddenly the offending vehicle, i.e., tractor No.HR 10 4051, driven by Suresh/ driver of the offending vehicle rashly and negligently came and hit the deceased with great force. Consequently, deceased Baljit Singh sustained fatal injuries in the said accident and when he was taken to the hospital declared 'brought dead'.

5. Respondent No.5, i.e., registered owner of the offending vehicle on the date of the accident, filed written statement, wherein he denied the assertions and allegations that he was either the owner or in possession of the offending vehicle. He further stated that he sold the offending vehicle to one Akash Bhatia S/o Shri Suresh Bhatia on 12.06.2002 and had delivered the physical possession on the said date. He further specified that said Akash Bhatia sold the offending vehicle to Shri Daya Nand S/o Sh. Chand Ram, i.e., appellant.

6. While deciding the claim petition, the learned Tribunal had framed the issue No.1 as under:-

“i) *Whether Sh.Baljit Singh died due to the accident arisen out of the use of offending vehicle No.HR-*

10-4051 being driven by R01 in a rash and negligent manner?”

7. It is admitted fact that no eye witness had been examined by the claimants before the learned Tribunal regarding occurrence of the accident.

8. The learned Tribunal had relied upon a criminal case registered under Sections 279/304-A IPC against Suresh/driver of the offending vehicle and after investigation, the police filed the chargesheet against him.

9. Learned counsel appearing on behalf of the appellant submitted that driver of the offending vehicle had died during trial of the criminal case. Therefore, the case against the said driver stood abated.

10. He further submitted that in the FIR, number of the offending vehicle was not mentioned. Thereafter, the police had recorded the statements of three witnesses, namely, Subhash, Randhir and Balbir on 07.01.2004 whereas the accident had taken place on 03.10.2003. Hence, the police in connivance with the claimants had planted all the witnesses named above just to take the claim against the vehicle which was not even involved in any way in the accident.

11. The learned Tribunal had recorded in the impugned award that R3W1 and R3W2 deposed that the said vehicle was taken to Jayshree Ganesh Dharamkanta on the date of the accident, i.e., 03.10.2003 at 11.22 pm for weighing and the same was weighed for its tare weight on 04.10.2003 at 5.46 am.

12. The learned Tribunal opined that the accident occurred at about 9.37 pm at Village Ochandi, without having been apprehended at the spot and was weighed as per receipt Ex.R3W1/2 at Badli Village, outer Ring Road at 11.22 pm. Distance between the place of occurrence and weight weighing machine even as per the time mentioned in the receipt Ex.R3W1/2 is not such that the offending vehicle after the occurrence of the accident could not have reached there. Therefore, its involvement in the accident in question could not be disputed.

13. While relying upon the case of ***Sukhdev Singh & Ors. Vs. Vinod Kumar & Ors. 107 2003 DLT 590***, the learned Tribunal held that the vehicle of the respondent was involved in the accident and accordingly directed the respondent No.5 and appellant to pay the compensation.

14. On the other hand, learned counsel appearing on behalf of the respondents/claimants submitted that the accident had taken place on 03.10.2003 at about 9.37 pm. It was a dark night. The deceased died immediately after the accident, therefore, no one could tell the number of the vehicle to the police. Thereafter, police verified this fact, investigated the case and recorded statement of one Subhash under Section 161 Cr.P.C., who specifically mentioned the number of the vehicle involved in the accident. Other two witnesses, namely, Randhir and Balbir, whose statements were also recorded by the Investigation Officer under Section 161 Cr.P.C. corroborated the statement of witness Subhash and accordingly the concerned Investigating Officer filed the chargesheet against Suresh, i.e., driver of the offending vehicle.

15. Learned counsel further submitted that two factors have been established (1) Subhash/driver of the offending vehicle was driving the

tractor at the time of the accident and (2) the vehicle bearing No. HR 10 4051 was the offending vehicle. He submitted that for the purpose of granting compensation, the aforementioned factors are sufficient.

16. I have heard the learned counsel for the parties and perused the record.

17. On perusal of the record, PW1 Balbir Singh deposed before the Criminal Court in FIR No.310/2003 that accident had taken place about five years back when he was present at his house at about 8.00 pm, he heard some noise, however, he could not tell the day, date, month and year of the accident. This witness had neither noted the number of the offending vehicle nor seen the driver of the said vehicle.

18. PW2 Randhir Singh also deposed before the Criminal Court in the said case. However, he did not give the number of the offending vehicle and disclose the identity of the driver. He stated that on 03.10.2003, he was present at his house when at about 9.00 pm he saw that a person was overrun by the Trolley fully loaded with Bhoosa attached to a Zetor Tractor driven by its driver rashly and negligently. The driver of the offending vehicle ran away with his Tractor and Trolley. A call was made to police at 100 number. Accordingly, police reached there and took the said person to the hospital.

19. It is admitted fact that neither the driver of the offending vehicle nor the Investigating Officer of the case bearing FIR No.310/2003 registered at P.S. Bhawana under Sections 279/304-A IPC had been examined.

20. However, the fact remains that the driver of the offending vehicle had been arrayed as accused; and the charge sheet was filed after the investigation. Pertinently, the driver of the offending vehicle had not made any complaint before the higher authorities against the false implication in the criminal case. Moreover, compliance of strict rule of evidence and principles are not necessary in the process of enquiry as envisaged under the Motor Vehicles Act, 1988. The law regarding the above propositions are settled in plethora of judgments pronounced by the Apex Court, including the case of *Bimla Devi & Ors. v. Himachal Road Transport Corporation and Ors. (2009) 13 SCC 530*. Therefore, I do not find any reason to interfere in the findings of the Ld. Tribunal.

21. Accordingly, the appeal is dismissed.

SURESH KAIT, J.

FEBRUARY 17, 2014

sb/jg