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

% *Judgment delivered on: 20th March, 2014*

+ **MAC.APP. No.860/2011**

RAM LAL & ORS. Appellants
Represented by: Mr. Amit Kr. Pandey and Mr. K.K. Singh, Advs.

Versus

RAMKESH GUPTA AND ORS. Respondents
Represented by: Mr. Nishant Kumar Srivastava, Adv. for R1.
Ms. Suman Bagga, Adv. for R3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present appeal, appellants / claimants have assailed the award dated 23.07.2011 passed by the Ld. Tribunal, whereby their Claim Petition was dismissed.

2. The brief facts of the case are that on 13.01.2009, at about 4.30AM, deceased Ajit Kumar hired an auto rickshaw bearing no. DL-1RK-4202 for dropping his friend Sh. Munkeer Sheikh at Old Delhi Railway Station. When they reached at 'T' Point of Mathura Road and Sher Shah Road, New Delhi, the above noted TSR had collided with an unknown dumper. Due to which, all the occupants of the TSR were severely injured and became unconscious. The driver of the dumper ran away from the spot. The PCR

van came there and took all the injured persons to Dr. Ram Manohar Lohia Hospital, where deceased Ajit Kumar died during his treatment.

3. Mr. Amit Kumar Pandey, Ld. Counsel appearing on behalf of the appellant submits that the appellants examined four witnesses to prove their case. Sh. Munkeer Sheikh, an eye witness of the accident in his statement categorically deposed that the accident occurred due to the negligence of the driver of the TSR. The said witness further deposed that the TSR was being driven by its driver in a rash and negligent manner at a high speed.

4. Moreover, respondent no. 1, owner of the offending vehicle appeared as R1W1, who in his evidence by way of affidavit did not dispute the factum of the accident and involvement of the TSR in the accident in question.

5. Mr. Pandey further submits that respondent no. 2, the driver of the offending vehicle neither appeared on the service of the notice, nor chose to depose in rebuttal. Respondent no. 1, owner of the offending vehicle also did not choose to examine any witness in support of their plea taken in the written statement.

6. It is submitted that, PW1, Sh. Munkeer Sheikh stated in his affidavit Ex.PW1/A that on 13.01.2009 at about 4.30AM, deceased Ajit Kumar at his request hired an auto-rickshaw, bearing No. DL-1RK-4202 to drop him at Old Delhi Railway Station from where he had to board a train for his hometown at Birbhum, West Bengal. The TSR was being driven by its driver at fast speed and in a rash and negligent manner. When they reached near 'T' Point of Mathura Road and Sher Shah Road, the said TSR was collided with some unknown dumper, which resulted in severe accident and

the driver of the said dumper ran away from the place of accident. To this effect an FIR no. 6/2009 Ex.PW1/1 was registered at PS-Tilak Marg against the unknown driver of the dumper.

7. Mr. Pandey further stated that in the said FIR, PW1 had wrongly mentioned the name of Ajit Kumar as Sajid due to confused state of mind and when he realized, he informed the IO Sh. Inderpal Singh about this mistake who accordingly recorded his statement Ex.PW1/2. At his pointing out, site plan Ex.PW1/3 was prepared by the IO. MLC of the deceased is proved as Ex.PW1/4. In cross-examination, PW1 denied the suggestion that the accident was caused due to the rash and negligent driver of the dumper only. However, he admitted that he did not get the FIR corrected regarding the negligence of the driver of the TSR as he had gone to his native village.

8. Mr. Nishant Kumar Srivatava, Ld. Counsel appearing on behalf of the respondent no. 1 / owner of the TSR mentioned above submits that accident had taken place on 13.01.2009. Accordingly, FIR was lodged against the unknown driver of the dumper. None of the witnesses alleged the negligence of the driver of the TSR in their statement recorded Under Section 161 Cr.P.C. or in the complaint made to the police whereupon the FIR No. 6/2009 was registered at PS-Tilak Marg.

9. Ld. Counsel further submits, Respondent no. 1 examined himself as R1W1 and tendered his evidence by way of affidavit reiterating therein the contents of the written statement. He deposed that on the date of accident, one Parvat Singh was driving the TSR and he had a valid driving licence issued from the Transport Authority, Mainpuri, which was valid from 26.12.2007 to 25.12.2010. The licence was proved as Ex.RW1/A. He also

proved the verification report of the driver issued by the licensing authority, Mainpuri, same is proved as Ex.RW1/B. He proved the insurance of the vehicle Ex.RW1/C with respondent no. 3.

10. Ld. Counsel further submits that his testimony had got unchallenged. Respondent no. 2 was proceeded ex-parte as no-one appeared on his behalf after filing of written statement, whereas respondent no. 3 did not examine any witness.

11. I have heard Ld. Counsels for the parties.

12. On perusal of the statement of PW1, the contents of the FIR and the site plan as discussed above, reveals that it is not denied that the above noted TSR was not involved in the accident. There was a confusion on the negligence whether the driver of the dumper or the driver of the TSR was negligent. Thus the appellants moved an application before the Ld. Tribunal to convert their Claim Petition to 163-A of Motor Vehicles Act, 1988. However, the same was dismissed vide order dated 14.03.2011.

13. While dismissing the Claim Petition, the Ld. Tribunal observed that number of the dumper could not be noted down and after the completion of the investigation final untraced report under Section 173 Cr.P.C. Ex.PW4/B was filed as it was hit and run case. Moreover, PW1 in his cross-examination by respondent no. 3/ Insurance Company stated that he did not get the FIR corrected regarding the negligence of the driver of the TSR.

14. Accordingly, Ld. Tribunal opined that in the absence of satisfactory evidence it is difficult to hold that respondent no. 2, the driver of the TSR

was responsible for the accident or that he had caused the accident due to rash and negligent driving of the TSR.

15. The fact remains that the TSR no. DL-1RK-4202 was involved in the accident, wherein deceased Ajit Kumar died. The settled law is that if two vehicles are involved in the accident, claimants are at liberty to claim the compensation from either of the vehicles.

16. Undisputedly, the deceased was travelling in the TSR noted above, which met with an accident with dumper and the compensation was sought against the TSR.

17. It is trite, Under Section 163-A of Motor Vehicles Act, claimants have to establish the factum of the accident not the factum of negligence.

18. Admittedly, the deceased died in the accident in which TSR no. DL-1RK-4202 was involved. Accordingly, appellants are entitled for the compensation under Section 163-A of Motor Vehicles Act.

19. In view of above discussion, I am of the considered opinion that Ld. Tribunal has wrongly rejected the plea of the claimants to convert the Claim Petition to 163-A of Motor Vehicles Act, 1988 and further dismissed the claim petition.

20. Consequently, the compensation comes as under:

Sl. No.	Heads of Compensation	Compensation granted by this Court
1.	Loss of dependency	Rs.4,80,006/-
2.	Loss of consortium	Rs.5,000/-

3.	Loss of Estate	Rs. 2,500/-
4.	Towards funeral expenses	Rs. 2,000/-
	TOTAL	Rs.4,89,506

21. The compensation amount shall carry interest @ 7.5% *per annum* from the date of filing of the appeal till realization of the amount.

22. Accordingly, the respondent No.3 is directed to deposit the compensation amount with up-to-date interest accrued thereon with the Registrar General of this Court within a period of five weeks from today, failing which, appellants / claimants shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

23. On deposit, the Registrar General is directed to release the 50% of the compensation amount in favour of appellant no. 2, wife of the deceased and 10% in favour of appellant no. 1, father of the deceased on taking steps by them. Out of the remaining 40% of the award amount, 20% each shall be kept in the form of FDRs in favour of appellant nos. 3 & 4 initially for a period of three years to be renewed further for a period of three years.

24. In view of the above, the appeal is allowed.

SURESH KAIT, J.

MARCH 20, 2014/jg