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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th February, 2016

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MAC.APP. 168/2012

VIRENDAR PARKASH SHARMA Appellant

Through: Appellant in person.

versus

RAM UDGAR & ORS Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appeal under Section 173 of the Motor Vehicles Act, 1988 (the MV Act) questions the correctness, legality and propriety of the view taken by the motor accident claims tribunal (the tribunal) in judgment dated 29.09.2011 whereby the claim petition of the appellant seeking compensation under Sections 166 and 140 of the MV Act for injuries suffered in motor vehicular accident on 08.12.1993, registered as suit no.30/2011, was dismissed, *inter-alia*, holding that the appellant had not been able to prove the involvement or negligence on the part of the driver of tempo bearing registration no.DBL-4195 (the tempo), driver and owner whereof were impleaded as first and second respondent. The said party respondents had suffered the proceedings *exparte*. Since the tempo in question was admittedly insured against

third party risk with the third respondent herein, which party upon being served with notice appeared and contested the claim, *inter-alia*, denying that the tempo was involved in the accident.

2. The appellant is a practicing advocate and has chosen to argue on his own behalf. He has been heard at length and with his assistance tribunal's record has been perused.

3. The learned counsel for third respondent (insurance company) arguing in reply submitted that the view taken by the tribunal cannot be faulted as requisite evidence worthy of reliance regarding involvement of the vehicle (tempo) in the accident has not been adduced.

4. It was the case of the appellant before the tribunal in the claim petition filed on 08.11.1994, almost eleven months after the accident, that on 08.12.1993 he was on his way to the High Court travelling on the pillion of scooter bearing registration no.DL-4SC-7596 (the scooter) driven by one Ranjeet Singh son of Mukhtiar Singh resident of BE-271, Hari Nagar Delhi-110064. He alleged that the tempo bearing registration no. DBL-4195 driven by the first respondent had come in a rash/negligent speed from the wrong side and hit the scooter from rear side making him and the scooter driver fall on the ground, both resultantly suffering injuries. He stated that he, alongwith the other injured, was taken to Ram Manohar Lohia Hospital in an unconscious state and was treated for injuries. He claimed compensation in the sum of ₹10,00,000/- for the injuries thus suffered. As observed earlier, the first and second respondent did not appear and file any response to the notices issued by the tribunal. The insurance company (third

respondent) appeared but joined issue, *inter-alia*, on the question of involvement of the tempo in the collision.

5. During inquiry into the claim petition, the appellant examined witnesses including himself appearing as PW1. The other witnesses examined relate to the medical treatment for the injuries suffered by him. Their evidence would only show that the appellant had suffered injuries but their depositions are of no avail to prove the involvement of the tempo in the collision. On that subject, it is the word of the appellant (PW1) which is the solitary evidence offered.

6. Undoubtedly, in his statement as PW1, the appellant deposed along the lines of the case set up in the claim petition including about the involvement of the tempo bearing registration no.DBL-4195, also mentioning that the said tempo was driven at that point of time by the first respondent herein.

7. The appellant himself brought on record copy of the FIR no.453/1993 that had been registered at 02:05 PM on 08.12.1993 on the basis of his own statement in police station Tilak Marg. This document shows that when the police had approached the appellant, he made a statement narrating the sequence of events leading to the accident mentioning, *inter-alia*, that the accident had been caused by a four wheeler tempo the number of which was not known to him. In the course of the inquiry the local police, under directions of the tribunal, submitted its record, *inter-alia*, showing that the offending vehicle could not be traced during investigation and, thus, the case (FIR) was sent as “untraced” by way of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C), on 22.03.1994.

8. The appellant did not examine Ranjeet Singh, the scooter driver on the pillion of which he was travelling at the time of accident, even though his full particulars as noted above were available to him. The appellant did not examine any other eye witness to the accident who could have come forward to state that particulars of the tempo which had caused the accident had come to his/her notice which could be eventually shared with the petitioner so as to facilitate taking a claim for compensation through the petition before the tribunal. The appellant has not explained in any manner as to how (after eleven months of the accident and lodging the FIR with the local police stating that he was not aware of the particulars of the tempo which had caused the accident) he had come to know about the identity of the tempo. He has not come forward with any evidence whatsoever indicating the source from which he had learnt about the particulars of the offending vehicle or as to whether he had shared the same with the police before he filed the claim petition to demonstrate that there was default on the part of the police in proper investigation of the crime reported by him.

9. The appellant relies on *Kusum Lata & Ors. vs. Satbir and Ors.*, (2011) 3 SCC 646, to contend that omission to note down the number of the offending vehicle cannot be held against him so as to disbelieve his word or to reject his claim petition. The cited case cannot come in aid of the appellant in the present case as he (appellant) himself is on record to state that he was not aware of the particulars of the vehicle which had caused the accident. He took this position immediately after the occurrence and he has not shown as observed above, by any evidence as to how or from which source he had learnt the particulars so as to seek compensation or for holding the first and second respondent liable as

principal tort-feasor or the person vicariously liable or the insurance company (third respondent) to be liable to indemnify.

10. The appellant argued that only because it has not been proved that the tempo was involved, he should not have been denied compensation in as much as he was still entitled to compensation in terms of Section 161 of the MV Act, it being a case of “hit and run”. For purposes of making a claim under Section 161 of the MV Act, the claimant (the appellant) will have to approach the concerned forum. Such relief could not have been considered or granted by the tribunal on a petition taken out under Section 166 of the MV Act.

11. Thus, the appeal is devoid of substance and is accordingly dismissed.

R.K. GAUBA
(JUDGE)

FEBRUARY 10, 2016

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