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

Date of Decision: 26th February, 2016

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FAO 506/2003

TARADAI & ORS.

..... Appellants

Through: Mr. J. S. Kanwar, Adv.

versus

RAMAN GROVER & ORS.

..... Respondents

Through: Mr. Kanwal Chaudhary, Adv. for R-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mahendra Kumar aged 21 years working as helper-cum-conductor on bus bearing registration no.DEP-6563 became untraceable to his parents on 08.08.1988. His father Tika Dass lodged a missing report vide DD no.41-B at 11:15 PM on 09.08.1988 with police station Kalyanpuri, Delhi. On 10.08.1988 at the instance of his father Tika Dass, first information report (FIR) no.173/1988 was registered in police station Kalyanpuri for investigation into the offence under Section 365 of Indian Penal Code, 1860 (IPC) on the basis of suspicion that he had been possibly abducted. In the course of investigation into the said FIR by the police, it came to be revealed that Mahendra Kumar had died in circumstances that seemingly indicated death suffered due to injuries in road traffic accident. His dead body having been found on 11.08.1988 in the jurisdictional area of Sector-20, Noida, Ghaziabad, Uttar Pradesh, it was sent for post-mortem examination.

2. Tika Dass filed a claim petition before the motor accident claims tribunal (the tribunal) seeking compensation under Section 110-A of the Motor Vehicles Act, 1939 (the MV Act, 1939), *inter-alia*, stating that the death had occurred due to involvement of two buses one bearing registration no.DEP-6563 and the other bearing registration no.DEP-7226. According to the case set up, Mahendra Kumar was employed as helper-cum-conductor of bus registration no.DEP-6563 of Raman Grover (first respondent in the appeal) and that it was involved in a collision against the other bus no.DEP-7226. It was submitted that the collision had taken place on account of negligent driving on the part of Mahesh Kumar and Jagat Singh, drivers (fourth & fifth respondent herein) who were respective drivers of the two buses. It was stated that bus no.DEP-7226 was owned by Ranvir Singh (second respondent herein) and was insured with New India Insurance Company Ltd. (sixth respondent herein).

3. Upon notices being issued, sixth respondent (the insurer) of bus no.DEP-7226 appeared to admit that there was an insurance cover taken against the third party risk in respect of the said vehicle. The third respondent (owner of bus DEP-7226) appeared and filed written statement only to say that the vehicle was subject to insurance cover. The other parties impleaded as respondents, however, chose to suffer the proceedings *exparte*.

4. The tribunal having registered the case as suit no.256/2002 (old no.806/1988) held inquiry by framing issues, prime one being as to whether the death had occurred on account of rash/negligent driving of bus bearing no.DEP-6563 by its driver.

5. While the inquiry was under way, the original claimant Tika Dass died. His legal heirs including his widow Tara Dai and son Anand Tika Dass Ramtake were substituted in his place and prosecuted the matter further. During the inquiry, the son of the original claimant appeared as solitary witness (PW1). The insurance company (sixth respondent), however, subsequently suffered the proceedings *exparte*.

6. The tribunal by judgment dated 04.03.2003 held that the allegations of rash/negligent driving on the part of the drivers of two vehicles had not been proved as the sole witness (PW1) was not an eye witness and was not in a position to vouchsafe sequence of events that had led to the alleged collision. It was further held that no other documentary proof had been adduced from which negligence on the part of the drivers of either of two vehicles could be inferred. With such finding returned, the tribunal proceeded to grant award in the sum of ₹25,000/- on the principle of no fault liability under Section 92-A of the MV Act, 1939 and directed the sixth respondent (the insurer) to pay with interest the said amount within the period specified apportioning the same amongst the two claimants who had taken over the proceedings on being substituted upon the death of the original claimant Tika Dass.

7. The appeal at hand was filed to question the above result of the claim petition mainly contending that the tribunal should have applied the principle of '*res ipsa loquitor*' and on that basis held that the accident had occurred due to fault on the part of the drivers of the two buses and calculated the compensation payable in accordance with law on fault

liability rather than restricting it to the award on principle of no fault liability.

8. During the pendency of this appeal, Tara Dai, widow of original claimant Tika Dass also died. The appeal has been prosecuted further by the legal heirs.

9. At the hearing, the learned counsel for the appellant fairly conceded that the claimants do not know or have access to any clear evidence as to the negligence on the part of drivers of any of the two buses mentioned in the claim petition. He submitted that no eye witness could be brought out since the police had not been able to unearth the entire set of circumstances in which Mahendra Kumar had suffered the fatal injuries. He pointed out with reference to DD no.41-B dated 09.08.1988 and the FIR that was registered later and the police proceedings relating to the discovery of the dead body to submit that the claimants till date have not been able to find out the entire truth nor have come across any relevant witness.

10. In above facts and circumstances, the view taken by the tribunal cannot be faulted. In absence of any material showing negligent driving on the part of any of the drivers compensation on the principle of fault liability could not have been awarded.

11. The appeal is dismissed.

R.K. GAUBA
(JUDGE)

FEBRUARY 26, 2016
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