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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30th March, 2016

+ MAC.APP. 467/2010

ANGAD SINGH & ORS.

..... Appellants

Through: Mr. Amit Kumar Pandey, Adv.

versus

BRIJ YADAV & ORS

..... Respondents

Through: Mr. Pankaj Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Vipin Kumar, a bachelor, engaged as a driver of three wheeler scooter bearing No. DL IR G6736 (TSR) was moving on road opposite CNG filling station, Outer Ring Road within the jurisdiction of PS Timarpur, Delhi at about 11 p.m. on 07.09.2008 when his vehicle came to be involved in a collision against motorcycle bearing No. DL 7S AY 1437 (motorcycle) driven by one Mathura Prasad. As a result of the said collision, both Vipin Kumar and Mathura Prasad sustained injuries. Information about this accident was conveyed to the police whereupon police control room (PCR) staff including head constable Brij Bhushan Tyagi, ASI Balkar Singh and constable Pradeep reached the place in the PCR Van. It further appears that while the said PCR staff was taking control of the situation, including to help the two injured persons being removed to hospital for immediate

medical aid, with local police staff of police station Timarpur also having arrived, another motor vehicle described as trolly bearing No. HR 38J 8675 (hereinafter described as the offending vehicle) came from the side of Burari at a rash speed and hit against the PCR van, the police officials and others person at the scene causing damage not only to some of the other vehicles but also injuries to a number of persons (stated to be about 20), including ASI Balkar Singh of PCR, who died in the result. It further appears that all the injured persons including those who were victims of the initial collision between the TSR and the motorcycle and those who were hit in the second collision involving the offending vehicle were eventually shifted to hospital. Besides ASI Balkar Singh of PCR, Vipin Kumar (TSR driver) and Mathura Prasad (the motorcyclist) were declared dead in the hospital.

2. Two cases were registered by the local police including first information report (FIR) No. 460/2008 for offences under Sections 279/337 of Indian Penal Code, 1860 (IPC) and the second FIR 461/2008 for offences under Sections 279/337/338/339/304-A IPC in local police station Timarpur. Whilst the first FIR (No. 460/2008) is concerned with the first collision involving the TSR and the motorcycle, the other FIR (No. 461/2008) related to the second collision involving the offending vehicle.

3. The parents of Vipin Kumar, the deceased TSR driver, appellants before this Court (hereinafter referred to as the claimants) instituted an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 15.10.2008 before the motor accident claims tribunal (the tribunal), *inter alia*, alleging that the offending vehicle had hit several persons including Vipin Kumar at the stage when the two persons injured in

the first collision involving his vehicle (TSR) and the motorcycle were being assisted for being shifted to hospital for treatment and further that the said accident had been caused due to rash/negligent driving of the offending vehicle by the first respondent herein and consequently the death had occurred on account of fault of the driver of offending vehicle, he being principal tortfeasor, its registered owner Subey Singh (second respondent herein) being vicariously liable and the third respondent ICICI Lombard General Insurance Company being liable to indemnify. The claimants had also impleaded their children (fourth to seventh respondents as *performa parties*).

4. The claim petition was resisted by the second respondent (the registered owner of the offending vehicle), *inter alia*, referring to the insurance cover taken out from the third respondent (insurer). The insurer, by its written statement, claimed that there was no cause of action as the death of Vipin Kumar had not been caused by the offending vehicle but on account of injuries suffered by him due to rash/negligent driving of the TSR by him.

5. During inquiry, some evidence was adduced by the claimants. It appears other accident claim cases had also been filed on account of injuries (or result thereof) suffered in the second collision, one of which was registered as Suit No. 360/2008. Two witnesses had been examined in the said other case, they being ASI Gajender Tyagi and Head Constable Brij Bhushan Tyagi. The tribunal, instead of calling the said witnesses to be examined decided to borrow the evidence given by them in the other case for purposes of the inquiry into the claim out of which the present appeal

arises. On analysis of the evidence, thus taken on board, including the testimony of the aforementioned witnesses recorded in another case, the tribunal, by judgment dated 08.01.2010, returned a finding upholding the contention of the insurer about the injuries (and death) suffered by Vipin Kumar being referable to the first collision rather than the second collision involving the offending vehicle. This, in the submission of the appellants, was not only unfair but most improper.

6. This Court finds merit in the argument. The version of head constable Brij Bhushan Tyagi, as appearing in his testimony in another case, has been disbelieved without he being called upon to explain the position he took vis-à-vis the injuries of Vipin Kumar which were at the core of controversy in the case before the tribunal.

7. The learned counsel for the appellant requests that the impugned judgment whereby the claim petition was dismissed on account of aforementioned adverse finding on record may be set aside and the matter remitted to the tribunal so that they can examine head constable Brij Bhushan Tyagi and prove the necessary facts to affirm the case brought by them before the tribunal to seek compensation.

8. For the forgoing reasons, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry in accordance with law. Needless to add, the appellants/claimants shall be entitled to lead further evidence during the remitted inquiry and the opposite parties which appear in contest shall be entitled not only to cross-examine such witnesses but also lead evidence in rebuttal.

9. The parties shall appear before the tribunal on 2nd May, 2016.
10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016/nk

