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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27.05.2016

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MAC.APP. 854/2012

UMESH KUMAR BHATIA

..... Appellant

Through None

versus

BABLI DEVI & ORS

..... Respondents

Through

Mr. S N Parashar, Adv. for R-1

Mr. J P Sharma, Adv. for R-2

Mr. R K Tripathi, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 22.11.2006, a motor vehicular accident occurred involving a three wheeler scooter bearing registration No.DL 0361 (TSR) resulting in death of Satish Kumar. The dependant family members of the deceased Satish Kumar (first and second respondents herein) instituted an accident claim case (MACT no.71/10/06) on 16.12.2006 seeking compensation under Sections 166 and 140 of Motor Vehicles Act (MV Act). In the said case, the fifth respondent (M/s Bombay Plastic Marketing Company) and the third respondent (New India Insurance Company) were impleaded as respondents, with the averments that the TSR was registered in the name of Umesh Kumar and insured against third party risk with the latter. Later, by amendment incorporated on 01.10.2007, the fourth respondent (Rohtas son

of Gopi Ram) was added as another respondent on the allegation that he was the driver of the TSR at the time of the accident. Noticeably, in the claim petition, the allegations were that the accident had occurred resulting in death of Satish Kumar due to negligent driving of the TSR, the claim having been made under Sections 166 and 140 of MV Act. The said fourth respondent Rohtas appeared and filed a written statement denying the case of claimants. Subsequently, by an amendment carried out in November 2009, the appellant was impleaded as yet another respondent on the averment that he was the registered owner of the TSR on the date of accident. The appellant appeared and filed a written statement, *inter alia*, admitting that the TSR had been purchased by him from M/s Bombay Plastic Marketing Company (fifth respondent herein), but pleaded that he had sold it to the fourth respondent Rohtas, for consideration, on 14.03.2005. It was, thus, pleaded that on the date of the accident i.e. 22.11.2006, the TSR was owned by Rohtas and not by the appellant. It appears from the record and the submissions made that the vehicle was eventually registered in the name of Rohtas on 08.12.2006.

2. During the inquiry, reliance was also placed on a cover note in respect of the TSR for the period 18.11.2006 to 17.11.2007 in the name of M/s Bombay Plastic Marketing Company (fifth respondent) which was the erstwhile owner of the TSR and which had concededly nothing to do with the vehicle after it had been transferred and registered in the name of the appellant on 23.12.2004.

3. The fourth respondent (Rohtas), having filed the written statement, chose to suffer the proceedings *ex parte*. The insurance company (third

respondent) denied its liability before the tribunal, *inter alia*, pleading that the cover note produced was a fake document. The tribunal held that even if the cover note were to be believed as a genuine document, it could not have been availed of for enforcing the indemnity clause inasmuch as the vehicle was not registered in the name of the fifth respondent in whose favour the said insurance cover purported to have been taken out.

4. During the evidence, the appellant examined himself as R4W1. In the course of his testimony, he proved document (Ex.R4W4/1) described as a delivery receipt executed on 14.03.2005 by fourth respondent (Rohtas) acknowledging having purchased the vehicle from the appellant. During his testimony, however, the appellant conceded that after the said sale of the TSR on 14.03.2005 he had not made any report to the transport authority where the vehicle was registered. Apparently, he had not taken any insurance cover in respect of the TSR for the period, covering the date of accident.

5. The tribunal, by judgment dated 30.04.2012, allowed the claim petition of the first and second respondent and granted compensation in the sum of Rs.19,97,224/- in their favour fastening the liability on the appellant, *inter alia*, holding that he was the registered owner of the vehicle at the time of the accident.

6. By the appeal at hand, the above noted finding is questioned. Reliance is placed on the delivery receipt (Ex.R4W1/1). The contention is that the appellant having shown by evidence that he had sold the vehicle in favour of the fourth respondent, he could not have been treated as either *de jure* or *de facto* owner of the vehicle and, thus, liability could not have been fastened on him.

7. Having heard learned counsel and having gone through the record, this court finds the appeal to be unmerited.

8. The provisions contained in Section 50 of MV Act cast a responsibility on the registered owner of the vehicle to intimate the transfer of the vehicle in the name of another person within a period of 14 days. Admittedly, no intimation was given by the appellant after the sale in favour of the fourth respondent. The definition of the expression “owner”, as given in section 2 (30) of the MV Act renders the appellant to have continued to be the owner of the vehicle, it having been registered in his name and the said registration having continued in the record of the registering authority even beyond the date of the accident. The appeal to the extent of this contention, denying the liability must be rejected.

9. The appellant also questions the calculation of compensation on account of loss of dependency. It is pointed out that the monthly dependency was calculated at Rs.8,185/- per month. The tribunal wrongly applied the multiplier of 18, ignoring the fact that the deceased was 34 years and in view of the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiplier of 16 applies. The counsel for the claimants fairly concedes to this but argues that the non-pecuniary heads of damages have not been properly taken care of.

10. The loss of dependency is re-computed with the multiplier of 16, at (8,185 x 12 x 16) Rs.15,71,520/-. Instead of non-pecuniary damages awarded by the tribunal, following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards

loss of estate and funeral expense are added. The tribunal had also granted compensation in the sum of Rs.69,264/- towards hospital and medicine bills. Putting together all these heads of damages (pecuniary and non-pecuniary) the total compensation comes to (15,71,520+2,50,000+69,264) ₹18,90,784/- rounded off to Rs.18,91,000/-.

11. Needless to add, the interim compensation of ₹50,000/-, if already paid, shall be suitably adjusted and the amount shall carry interest as levied by the tribunal.

12. The award is modified accordingly.

13. The statutory amount of ₹25,000/- is stated to have been deposited by the appellant before filing of the appeal. The said amount, if deposited, shall be released to the claimants towards part satisfaction of their claim.

14. The appellant is directed to pay the balance of his liability under the modified award by requisite deposit with the tribunal within 30 days of this judgment whereupon it shall be released to the claimants. In case the appellant fails to make said deposit within the time given the rate of interest shall stand increased to 10% per annum.

15. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016/VLD