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

Date of Decision: 14th January, 2016

+ MACA 803/2010

REETA SEHGAL & ORS. Appellants
Through: Ms. Aarti Mahajan Shedha & Mr.
Manoj Kumar, Advs.

versus

RAVINDERNATH & ANR. Respondents
Through: Mr. Mohan Babu Agarwal, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (“MV Act”) impugns the judgment dated 06.06.2010 of motor accident claims tribunal (“the tribunal”) whereby it declined to award compensation in favour of the appellants holding that they had failed to prove involvement of the motor vehicle in the accident based on which cause of action was alleged.

2. The appellants had filed the claim petition under Sections 166 read with Section 140 of MV Act registered as claim case No. 426/2004 before the tribunal at Dwarka Courts, New Delhi seeking compensation in the sum of Rs. 22 lakhs on account of death of Harmesh Kumar Sehgal (“the deceased”) in a motor vehicular accident that is stated to

have occurred on 4.2.2004, opposite house No. 7-8, Cariappa Marg, Station road, Delhi Cantt. The appellants/claimants include the widow Reeta Sehgal (the first appellant) and three children (the second to fourth appellants) of the deceased.

3. It is undisputed case that the deceased was moving at the relevant point of time on two wheeler scooter No. DL 4SS 3633 (“the scooter”). It was alleged by the appellants in the claim petition that the scooter driven by the deceased was hit by the car bearing registration No.DL-2CP-1820 (hereinafter referred to as “the Car”) which resulted in fatal injuries being suffered by the deceased giving rise to the cause of action for a claim petition to be thus presented. It is admitted that the car is the registered property of the first respondent and was duly insured for the relevant period with the second respondent.

4. When the claim petition came up for consideration before the Tribunal, upon notice, the first respondent appeared and through his written statement denied the liability pleading that the car was not involved in any such accident as has been alleged. The claim petition was inquired into on the basis of issues framed on 2nd March, 2006, the first of which included the question as to whether the accident had occurred on account of rash or negligent driving of the car of the first respondent. The claimants led evidence by examining five witnesses including ASI Des Raj (PW-1), S.K. Bahl (PW-2), Reeta Sehgal (PW-3), Vikrant Sehgal (PW-4) and Ruchi Sehgal (PW-5).

5. The evidence of PW-1 primarily concerned the record of investigation by police into the accident which was subject matter of FIR No. 35/2004 (Ex.PW-1/1) which had been registered with police station Delhi Cantt. for offences punishable under Section 279/304 of

Indian Penal Code. PW-2 was brought in to prove the status and income of the deceased at the time of his death, it having been established that he was working as a typing/filing clerk with Canara Bank, New Delhi. PW-3 and PW-5 are two of the claimants who testified essentially about their status and claim.

6. PW-4 Vikrant Sehgal (son of the deceased) is the material witness and was presented as the person who had come on the scene of accident on the close heels of the alleged collision involving the scooter and the car and from there had accompanied his father (the deceased) to Deen Dayal Upadhyay Hospital, New Delhi where, upon being medically examined vide medical report (Ex.PW1/5), he was declared brought dead.

7. On consideration of the evidence, the learned presiding officer of the Tribunal, by judgment dated 6th June, 2010 found that the claimants had failed to prove the involvement of the car of the first respondent in the accident wherein the deceased had suffered fatal injuries giving rise to the claim petition. The evidence of PW-4 was held to be deficient to bring home the said fact and it was observed that the principle of *res ipsa loquitur* did not have any application to the case at hand. In the wake of negative finding on the issue of involvement of car in the accident, the claim petition was dismissed by the Tribunal.

8. Feeling aggrieved with the aforementioned adverse finding, and the conclusion of the claim petition, this appeal has been preferred with the submissions that the evidence on record has not been properly appreciated. It is urged that there is enough material available from which it can be inferred that the car of the first respondent was indeed involved in the fatal accident wherein Harmesh Kumar Sehgal had died

on 4.2.2004. The claimants submit, through counsel that the Tribunal has failed to take note of the fact that the registered owner (the first respondent) of the car had avoided entering the witness box and, thus, nothing has been brought in on his part to negate the evidence of the claimants that it was his car which was actually the other vehicle involved in the collision.

9. During the course of the hearing, the learned counsel on both sides have taken me through the evidence on record in entirety.

10. On careful perusal of the evidence, this Court finds that the learned Tribunal has examined and appreciated the evidence in proper perspective and there is no error or infirmity in the view taken. I set out the detailed reasons for this view hereinafter.

11. The FIR (Ex.PW-1/1) was registered on 4.2.2004 at 6.15 p.m. mainly on the basis of DD entry No 39B recorded at 5.05 p.m. and the observations of the Investigating Officer ASI Mohinder Nath to whom the matter had been entrusted for initial inquiry. The police case was registered on the basis of *rukka* (Ex.PW1/2) sent by ASI Mohinder Nath from the scene of accident at 6.00 p.m. on 4.2.2004. The FIR/*rukka* duly noted the facts that the deceased had been brought to Deen Dayal Upadhyay Hospital by his son Vikrant Sehgal (PW-4). The MLC (Ex.PW-1/5) recorded in the said hospital shows that the deceased had been brought to the casualty in unconscious state at 2.40 p.m. on 4.2.2004 and declared dead on arrival. It is noted in the *rukka*/FIR that before sending the case for registration, ASI Mohinder Nath had met Vikrant Sehgal (PW-4), then aged 15 years, who had informed him that his father had been hit by some unknown vehicle which had fled away from the scene of occurrence after the accident. The scooter in

accidental state was found parked in Kothi No.8 on station road, Cariappa Marg, within the jurisdiction of police station Delhi Cantt. There was no other vehicle found at the scene by ASI Mohinder Nath.

12. It is basically on the version of Vikrant Sehgal (PW-4) that it has been alleged that the accident had been caused by the car of the first respondent. This version came in the complaint dated 9th August, 2006 (Ex.PW-4/2) addressed by the first appellant to the Commissioner of Police, Delhi, sent by email vide acknowledgment (Ex.PW-4/3). The evidence led through Vikrant Sehgal (PW-4) in the form of his affidavit (Ex.PW-4/A) states that on 4.2.2004, he was returning home from Air Force School, Subroto Park, Delhi Cantt. when he saw through the window of the school bus, then at Cariappa Marg, New Delhi, the scooter of his father lying on the road in damaged condition. It is his version that on his request the school bus was stopped and he along with his school teacher came down and found some persons trying to shift his injured father to a hospital and a person related to the car being persuaded by the people to assist, since it was the said car which had hit the scooter while overtaking the scooter from the right side. Vikrant Sehgal (PW-4) also claimed in the said affidavit that on account of his immaturity and shock he had failed to take note of the registration number of the car at that point of time but had accompanied his father to the hospital where his father was declared dead. It is his version that while his father was being examined in the casualty, the car driver had fled away from the place but the car number had been noted by the gate keeper of the hospital on a piece of paper which he had handed over to him later and on that basis he had noted the particulars of the car in his pocket diary/note book, extract (Ex.PW-4/1) whereof was adduced in

evidence. It was further his version that he had handed over the chit received from the gate keeper to ASI Mohinder Nath of Police Station, Delhi Cantt. but inspite of this fact brought to the notice of police official, the particulars of the car were not noted in the FIR or police proceedings.

13. The above deposition of Vikrant Sehgal (PW-4) was disbelieved by the Tribunal with the following observations:-

“19. Sh. Vikrant PW4 does not claim that he had himself noted down the no. of the car. He claims that the no. of the car had been noted down by the gatekeeper, who in turn handed over the same to him (Sh. Vikrant). This piece of paper was handed over by him to the IO. It is not clear as to when the name of the owner had been mentioned by Sh. Vikrant (PW4) in the pocket diary. The guard has not been examined. Therefore, the basis of Sh. Vikrant having come to know about the no. of the offending vehicle from the guard has not been laid down. There is no photograph of the place of accident. The offending vehicle was not found lying at the place of accident. The investigation conducted by the police had resulted in cancellation of the case.”

14. In the considered opinion of this Court, the conclusion reached by the tribunal cannot be faulted. If the gate keeper of the hospital had indeed noted down the particulars of the car, he was a material witness. There is no reason why he could not be identified and brought in to depose. Same applies to the school teacher who according to PW-4, had got down from the school bus at the scene of accident to assist him (PW-4) in shifting his then injured father for immediate treatment. She would have been in a better position to tell the identity of the vehicle in

which the victim was thus shifted from the place of occurrence. In the facts and circumstances the version that it was the car of the first respondent surfaced almost as an afterthought. ASI Mohinder Nath had no reasons for not taking note of the particulars of the offending vehicle if they had been made available to him even while he was in the process of preparing his papers for getting the FIR registered or, for that matter, even thereafter.

15. The *rukka* is a contemporaneous record of the proceedings prepared by a public official who had no personal interest to grind. The version attributed to Vikrant Sehgal in the said *rukka* that his father had been hit by some unknown vehicle cannot be wished away. Concededly, PW-4 did not see the accident happening. His statement that he learnt from the people at large that the scooter had been hit by the car of the first respondent is hearsay. He deposed about that particular car not from the personal knowledge but on hearsay.

16. I agree with the conclusions of the learned Tribunal that the principle of *res ipsa loquitur* has no role to play in the present case. For the said principle to be brought in, the presence of the car at the scene of accident at least would have to be shown. That is where the claimants evidence has been deficient.

17. Reliance has been placed by the claimants on the judgments in *New India Assurance Company Ltd. vs. Dhanesh Kumar & Ors.* 1993 ACJ 1122, *New India Assurance Company Ltd. vs. Ayesha Begum & Ors.* 1995 ACJ 587 and *United India Insurance Company ltd. vs. Maya Rani Debnath & Anr.* 1(2004) ACC 233 (DB). The facts of the said cases are distinguishable. In *Dhanesh Kumar* (supra), the presence of the taxi at the scene of accident was admitted. In *Ayesha Begum*

(supra), the collision between two vehicles including that of the offending driver was admitted, the controversy basically surrounding the question of fault. In *Maya Rani Debnath* (supra) also there was sufficient evidence to show the presence of the offending vehicle at the place of accident.

18. For the foregoing reasons, and in the facts and circumstances, the findings recorded by the Tribunal, negating the case of the appellants (claimants) as to the involvement of the car of the first respondent must be upheld. It is the claimants who had asserted the fact and it was primarily their burden to prove it. Since they failed to discharge their primary burden, the absence of the first respondent from the witness box is inconsequential.

19. In the result, the appeal is found devoid of merit and is dismissed.

R.K. GAUBA
(JUDGE)

JANUARY 14, 2016/nk