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

Date of Decision: 22nd April, 2016

+ **MAC.APP. 192/2013**

SUKHBIR SINGH

..... Appellant

Through: Mr. Bankey Bihari Sharma, Adv.

versus

R.M. PANDEY

..... Respondent

Through: Mr. J P Mishra, Adv.

+ **MAC.APP. 198/2013**

SUKHBIR SINGH (DRIVER)

..... Appellant

Through: Mr. Bankey Bihari Sharma, Adv.

versus

ANURAG PANDEY

..... Respondent

Through: Mr. J P Mishra, Adv.

+ **MAC.APP. 197/2013**

STATE OF JAMMU AND KASHMIR

..... Appellant

Through: Mr. Bhaskar Subramanian, proxy for
Mr. Arif Mir, Adv.

versus

R.M. PANDEY

..... Respondent

Through: Mr. J P Mishra, Adv.

+ **MAC.APP. 199/2013**

STATE OF JAMMU AND KASHMIR

..... Appellant

Through: Mr. Bhaskar Subramanian, proxy for
Mr. Arif Mir, Adv.

versus

ANURAG PANDEY

..... Respondent

Through: Mr. J P Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 28.08.2004 at about 9.30 AM, a motor vehicular accident occurred near Tonga Stand Lodhi Colony within the jurisdiction of police station Lodhi Colony, New Delhi wherein Anurag Pandey and R.M.Pandey suffered injuries. Both of them preferred accident claim petitions (suit No.320/10 and suit No.773/10), instituted on 20.04.2007. In the said accident claim cases under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), it was alleged that the accident had been caused due to rash/negligent driving of motor vehicle described as Gypsy bearing registration No.JK 02 S 915 which belongs to police department of the State of Jammu & Kashmir (J & K), it being driven at the relevant point of time by its employee Sukhbir Singh (driver). In spite of notice, the State of

Jammu & Kashmir (appellant in MAC.APP.Nos.197/2013 and 199/2013) did not appear to put in any contest. Sukhbir Singh (the driver) had been shown in the array of parties in the two petitions as the second respondent. He (appellant in MAC.APP.Nos.192/2013 and 198/2013) appeared and submitted a written statement seeking to contest mainly denying the allegation that the gypsy (hereinafter referred to as the offending vehicle) had caused any such accident.

2. The tribunal held inquiry clubbing the two petitions for such purposes. During these proceedings, the claimant Anurag Pandey was examined as PW1 and claimant R M Pandey as PW2, on the strength of their respective affidavits (Ex.PW1/X and PW2/A respectively). It appears Sukhbir Singh, the driver examined himself as R2W1 and also relied on an eye-witness named Deepak, also labeled as R2W1 in the records.

3. By the deposition of claimants, which is sought to be corroborated by the record of the criminal case arising out of the first information report (FIR) no.194/04 of police station Lodhi Colony, it was brought out that the two injured persons (claimants) were standing near a tea vend when the offending vehicle had come in a rash manner and hit against both of them and the tea vend (*khokha*). By his own testimony, and the word of R2W1 (Deepak), it was sought to be shown by the driver that there were two other vehicles involved in the collision, one of which, a vehicle described as Tata 407, was moving ahead and the other, an ambassador car, was following the gypsy. The driver of the offending vehicle testified that the vehicle in front (Tata 407) was not in proper control of its driver and while taking a right turn had hit against some persons who were standing on right side and

while he (the gypsy driver) had tried to stop his vehicle to save himself from the truck coming from opposite direction, the ambassador car which had been moving in the rear, ended up colliding with gypsy which resulted in it getting pushed further so as to, in turn, end up hitting the tea *khoka*.

4. The tribunal was not satisfied with the defence thus taken by the gypsy driver (Sukhbir Singh). It returned a finding that the accident resulting in injuries to the two claimants had been caused due to negligent driving of the gypsy by Sukhbir Singh. He having been held to be the principal tort-feasor, and his employer (as also the owner of the gypsy) having been held to be vicariously liable, both were found to be jointly and severally liable to pay the compensation. In the case of injuries suffered by Anurag Pandey (suit No.320/2010), the compensation awarded was Rs.8,48,500/- while in the case of R M Pandey (suit No.773/2010) compensation in the sum of Rs.70,000/- was awarded; the awards in both cases carrying interest at 9% per annum from the date of filing of the respective petitions till realization.

5. These appeals have been preferred by both the respondents before the tribunal in the two claim cases mainly to contend that the evidence of Sukhbir Singh (the driver of the offending vehicle) through his own mouthpiece (R2W1), as also through his witness Deepak (R2W1), should have been accepted. In this context, reliance is placed on the mechanical inspection report of the offending vehicle, as forming part of the record of the criminal case, showing that it had suffered damage both in the front and on the rear side.

6. Having heard arguments and having gone through the record, this Court finds no substance in the contentions urged. Noticeably, in the written statements filed in answer to the claim petitions, no theory of involvement of any vehicle other than the offending vehicle was indicated, not even remotely. The driver of gypsy (appellant Sukhbir Singh) came with a bald denial of involvement of his vehicle. The State of Jammu & Kashmir (appellant) did not even put in any contest and rather chose to suffer the proceedings *ex parte*. The report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into the FIR that had been registered by police station Lodhi Colony would not show presence or involvement of any vehicle other than the offending vehicle. The mere fact that gypsy had suffered damage both in the front and in the rear side by itself cannot mean that it had ended colliding against two vehicles one in the front and the other behind. There are no particulars given of the other two vehicles to which reference was made during the evidence at the inquiry. Rather the suggestion given to Anurag Pandey (PW1) during his cross examination that the accident had occurred because the vehicle in the front had hit the gypsy does not jell with the defence now propagated.

7. In above facts and circumstances, the appeals are found to be unmerited. They are dismissed.

8. The interim stay granted against execution stands vacated. If any amount has been deposited by the parties held liable to pay the compensation, in terms of the earlier orders, the same shall now be released to the respective claimants as per the directions in the impugned judgment.

If there is a shortfall or any default in compliance with such obligation, the claimants are at liberty to take out appropriate proceedings before the tribunal to enforce the awards.

9. The statutory deposits, if made, shall be released only after satisfaction is recorded that the awards have been satisfied.

10. The appeals are disposed of in above terms.

APRIL 22, 2016
VLD

R.K. GAUBA
(JUDGE)

