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

**Date of Decision: 19<sup>th</sup> April, 2016**

+ **MAC.APP. 1235/2012**

**R.K.JUNEJA**

..... Appellant

Through: Mr. R. K. Kohli, Ms. Mamata Pal &  
Mr. S. B.Singh, Advs.

versus

**NARESH PANDIT & ORS.**

..... Respondents

Through: Ms. Archana Gaur, Adv. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. The appellant was admittedly the owner and driver of the car bearing registration no.DL-9CD-0225 (the car), when it was involved in a collision against three wheeler scooter bearing registration no.DL-1RE-6546 (TSR) on 29.11.2008 at about 11:30 PM, at a place described as Tilak Nagar flyover, the car concededly having hit the TSR from behind. The TSR was admittedly driven by Naresh Pandit (first respondent), statedly owned by Shailendra (second respondent) and insured against third party risk for the period in question with National Insurance Co. Ltd. (third respondent). The TSR is stated to be moving on road with three persons travelling as passengers. As a result of collision, the said passengers are stated to have

suffered injuries with one Shashi Kant Kiran dying in the consequence. The police registered a first information report (FIR) no.367/2008 in police station Tilak Nagar taking up the matter for investigation into the offences including those punishable under Sections 279/337/338 & 304-A of Indian Penal Code, 1860 (IPC), on the basis of evidence gathered wherein, the appellant stood summoned as an accused by the criminal court and put to trial.

2. The appellant preferred an accident claim case on 17.12.2009 (suit no.115/09/10) before the motor accident claims tribunal (the tribunal) seeking compensation on the averments that the accident had occurred due to negligent driving on the part of the TSR driver since he had suddenly changed lane in order to overtake another TSR moving in front and thereby coming in the way of the car resulting in the collision. The appellant claimed that he had suffered injuries and had also incurred expenditure in repair of the car which had been damaged as a result of the mishap. In the claim case, he impleaded the driver, owner and the insurer of the TSR as the respondents.

3. It may be mentioned here that the dependant family members of Shashi Kant Kiran, the passenger of the TSR who had died also preferred an accident claim case before the tribunal (case no.635/2014) in which the appellant was impleaded as the sole respondent, he being the owner and driver of the car. In the claim case thus preferred by the dependant family members of Shashi Kant Kiran (the deceased passenger), instituted on 21.08.2009, it was alleged that the accident had occurred due to negligent driver on the part of the appellant since he had driven the car in rash speed

hitting the TSR moving ahead from behind causing injuries to three passengers and death of one of them. It is an undisputed case that the car was not insured against the third party risk for the period in question and, thus, no insurer was impleaded in the claim case brought by the dependant family members of the deceased passenger.

4. It must further be added here that the claim case presented by the appellant (suit no.115/09/10) and the claim case presented by the dependant family members of the deceased Shashi Kant Kiran (no.635/2014) appear to have been made over to different tribunals where they were inquired into separately each leading to separate judgments.

5. In the claim case presented by the appellant, during the course of inquiry, he examined himself (PW1) on the strength of his affidavit (Ex.PW1/A), also examining Mukesh Kathuria (PW4), a relative, who was statedly moving with him as a passenger in the car at the time of the accident. The evidence of PW1 and PW4 is along lines of the pleadings referred to above. Additionally, the appellant examined Shahzad Alam (PW2), Dr. S. K. Tyagi (PW3), Dr. Anil Sagar (PW5), Jagmal Singh (PW6), Mukesh Kumar Sharma (PW7) and ASI Gurucharan Singh (PW8). While the evidence of PW2 and PW6 related to the expenditure incurred in carrying out repairs of the car which had been damaged, the testimony of PW3 and PW5 pertained to the injuries and the treatment taken therefor. PW7, an official of the court of metropolitan magistrate where the criminal case pertaining to the FIR referred to above has been pending trial, was examined to prove the copy of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C), which is inclusive of documents

(collectively Ex.PW7/A) in the nature of site plan and mechanical inspection reports. PW8 is the police official who had conducted investigation into the said FIR.

6. Pertinent to note here that first respondent Naresh Pandit, the driver of the TSR also appeared as a witness (R1W1) on the basis of his affidavit (Ex.R1W1/A) in which he affirmed the facts on oath again on the lines of his pleadings.

7. The tribunal dismissed the claim case of the appellant on the basis of the following observations:-

*“I have gone through the entire pleadings as well as evidence adduced wherein the petitioner has filed his affidavits reiterating the averments made in the petition and he has been cross examined. In the cross examination, the petitioner has admitted that he has been arrayed as an accused in FIR registered in the present case. The petitioner has also admitted that no estimate had been taken as to the damage sustained by the vehicle of the petitioner. Petitioner has also admitted that the car was not insured at the time of accident. It has also been considered that the vehicle was not got mechanically inspected by the petitioner after the accident and petitioner has no documentary proof to show as to the damage sustained by the vehicle. Keeping in view the aforesaid facts and circumstances where the petitioner himself has failed to prove his case as per the law qua the damage sustained by the said vehicle, I do not find any reason as to why the respondent should be liable as the petitioner has not shown any evidence whereby the accident had occurred because of the rash and negligent driving of the respondent No.1 and 2. In fact, case has been made out against the petitioner whereby due to his rash and negligent driving a person had died in the accident. Keeping in view the said fact, petitioner does not deserve any compensation as regards the damages for his vehicle. The issue 1 & 2 are decided against the petitioner.”*

8. Having heard the learned counsel for the appellant and having gone through the tribunal's record, this court finds the manner in which the claim case was decided by the tribunal to be wholly improper. The tribunal has not considered the evidence at all, not the least on the issue of negligence which, given the fact that the claim was made under Section 166 of the Motor Vehicles Act, 1988 (the MV Act), was a *sine-qua-non* for grant of any relief. Even on the question of assessment of damages, the evidence has not been discussed. Rather, assumptions have been made that proper evidence with regard to mechanical inspection is not available to make estimation as to the extent of damages sustained by the vehicle. The presiding officer of the tribunal appears to have not even looked into the file before recording the observations to such effect as quoted above.

9. Given the above nature of handling by the tribunal, this court being the first appellate court, has undertaken the necessary exercise and considered the evidence in entirety. On the question of negligence, however, this court finds the evidence on record loaded against the case set up by the appellant and, therefore, the result of this appeal will have to be again adverse to the cause brought by the appellant. The reasons are set out hereinafter.

10. Though the appellant, appearing as PW1, affirmed on oath that the car was moved in the right lane (it would be lane meant for fast traffic) and that it was the TSR which had suddenly come in the way, and his word being supported by that of PW4, a passenger in the car, there is no reason why the evidence of R1W1, the TSR driver should be disbelieved. He (TSR driver) has deposed that his vehicle was moving at a speed of 20-25 kmph and that

the car which had come from behind to hit his TSR was moving at a speed of 80-90 kmph. During his cross-examination, no effort was made to discredit his evidence with regard to the extent of speed at which the two vehicles were moving at the relevant point of time. Undoubtedly, it was suggested to R1W1 that the accident had occurred because the TSR had changed lane and come in the way of the car. The theory of changing lane by itself cannot save the day for the appellant, the car driver. It cannot be ignored that it was the car which had hit the TSR from behind. The extent of damage that both the vehicles suffered as a result of the collision, as borne out by the photographs (Ex.PW1/7 collectively) filed by the appellant himself, shows that it was the car which was moving at speed which was uncontrollable.

11. In cases of this nature, the proof of fault is not required to be proved beyond all reasonable doubts. But, even on the test of preponderance of probabilities, the very fact that the TSR was hit from its rear side by the car which was coming from behind, the burden of explaining as to why collision could have been avoided lies squarely at the door of the appellant. On careful appraisal of the material on record, this court finds that the appellant has miserably failed to discharge the said burden.

12. For the foregoing reasons, the appeal must fail. It is accordingly dismissed.

**R.K. GAUBA**  
**(JUDGE)**

**APRIL 19, 2016**  
**ssc**