

\$~40 & 41

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

Date of Decision: 17th February, 2016

+ **CM(M) 1324/2009 & CM APPL. 16555/2009**

BAHADUR SINGH YADAV Petitioner

Through: Mr. Vikas Yadav, Adv.

versus

MAHENDER PAL GUPTA Respondent

Through: Mr. Anand Prakash & Mr. Ravi
Dhoopar, Advs.

+ **MAC.APP. 637/2009 & CM APPL.Nos. 18941/2009, 18942/2009**

BAHADUR SINGH YADAV Appellant

Through: Mr. Vikas Yadav, Adv.

versus

MAHENDER PAL GUPTA & ORS Respondents

Through: Mr. Anand Prakash & Mr. Ravi
Dhoopar, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The petition (CM main no.1324/2009) and appeal (MAC APP. 637/2009) arise out of different orders of motor accident claims tribunal (the tribunal) in relation to the same proceedings and have bearing on each other.

Since certain common questions of fact and law arise, both have been heard together and are being decided through this common judgment.

2. Urmil Kanta died in a motor vehicular accident that occurred at about 08:00 AM on 26.07.1995 while alighting from bus bearing registration no.DL-1P-2305 (described as the offending vehicle) at its bus stop opposite Tis Hazari Courts. She suffered injuries on account of fall statedly as a result of bus having been moved forward with a jerk by its driver. She succumbed to the said injuries. On this account, her husband Mahender Pal Gupta with two children Karuna Gupta and Tarun Gupta brought claim petition under Section 166 of Motor Vehicles Act, 1988 (the MV Act) before the tribunal which was registered as suit no.220/2002 (old no.578/1995). The said claimants impleaded the petitioner/appellant Bahadur Singh Yadav as the second respondent in the claim petition on the ground that he was the registered owner of the offending vehicle.

3. It may be mentioned at the outset that the bus was, and has continued to be, registered in the name of the petitioner/appellant till date. According to the case set up before the tribunal, the bus was driven by Narpal Singh, who was impleaded as the third respondent in the claim petition, in addition to Oriental Insurance Co. Ltd. (impleaded as first respondent before the tribunal) on the averment that the offending vehicle was insured with it against third party risk for the relevant period. It may be noted here itself that the insurance cover could not be proved and, thus, the said insurance company stood exonerated to pay or indemnify.

4. The record of the tribunal shows that the petitioners' particulars were given in the claim petition as B. S. Yadav son of M. C. Yadav, resident of

RZ-6, Partap garden New Delhi. It has been fairly conceded by his counsel at hearing that this was his correct address and as per registration certificate of the offending vehicle. Though it is his contention that he had later changed his residence to a property which is described as RZ-6-C Partap Garden, New Delhi, it is also fairly conceded that no intimation about the change of address was given by the petitioner/appellant to the registering authority at any point of time.

5. The tribunal's record further shows that a notice addressed to the petitioner/appellant on the claim petition was duly served at the address given in the cause title which, it bears repetition, is same as the one noted by the registering authority in respect of the offending vehicle. The tribunal's record further reveals that a counsel appeared purportedly representing the petitioner/appellant on 20.03.1997 and filed a written statement in answer to the claim petition with reply to an interim application, both dated 16.07.1996. In subsequent proceedings, there was no appearance on behalf of the petitioner/appellant or, for that matter, on behalf of the driver Narpal Singh. Thus, both were set *ex parte*.

6. Against the above-said backdrop, the tribunal held inquiry into the claim petition and decided it by judgment dated 13.05.2003 holding the petitioner/appellant and the driver (third respondent before the tribunal) jointly and severally liable to pay compensation to the claimants which was assessed in the sum of ₹4,64,000/-, with interest levied at the rate of six percent (6%) per annum from the date of filing of the petition.

7. It is the contention of the petitioner/appellant that in the wake of process issued on the execution proceedings taken out by the claimants on the basis of the aforementioned judgment of the tribunal, a bailiff visited his premises on 17.05.2005 which resulted in he being made aware of the judgment of the tribunal holding him jointly and severally liable to pay the compensation. In the wake of this, he moved an application under Order 9 Rule-13 of Code of Civil Procedure, 1908 (CPC) before the tribunal which was registered as case no.M-10/2008(2005) on 06.06.2005 seeking *exparte* judgment dated 13.05.2003 to be set aside and the inquiry reopened.

8. The application of the petitioner/appellant under Order 9 Rule-13 CPC was inquired into by the tribunal and decided by order dated 29.08.2009. The tribunal did not find any merit in the contentions urged and, thus, dismissed the prayer.

9. The petition (CM main no.1324/2009) was preferred to challenge the order dated 29.08.2009 of the tribunal dismissing the application under Order 9 Rule-13 CPC. Later, the MAC appeal (no.637/2009) was preferred to also question the impugned judgment of the tribunal deciding the claim case on 13.05.2003. The contention raised in the petition is that there was fraud played in that notice was not served and an advocate had been arranged to appear on behalf of the petitioner to show some contest but thereafter proceedings suffered *exparte*. It is also the contention of the petitioner in the petition, as indeed in the appeal, that the offending vehicle had already been sold by him for consideration on 13.01.1993 to Ms. Lalita Setia on the basis of document in the nature of general power of attorney (GPA) alongwith two signed blank papers (Form no. 29 & 30) also handed

over. It is the contention of the petitioner/appellant that Ms. Lalita Setia, in turn, had sold the offending vehicle, on 10.01.1995, to one Santokh Singh against a Will, duly registered. It is explained that during the relevant period permits of such vehicles as involved here were not being allowed to be transferred and, therefore, the mode of sale by registered Will was adopted. It is further the case of the petitioner/appellant that the said Santokh Singh had sold the offending vehicle further, on 27.01.1995, to one Charanjit Singh @ Ranjeet Singh. It is pointed out that a person named Ranjeet had taken over the possession of the offending vehicle on *superdagi* from the criminal court in the course of proceedings arising out of the first information report (FIR) that had been registered by the local police concerning the motor vehicular accident and death of Urmil Kanta.

10. The tribunal while holding the contentions of the petitioner/appellant unmerited, recorded its observations in the order dated 29.08.2009 to the following effect:-

“The applicant has sought the setting aside of the ex-parte award on the ground that he was never served with the summons/notice of the main petition and that any memo of appearance or WS which was filed on his behalf, were never filed by him. Perusal of the proceedings sheets in the main file revealed that the petition was filed on 28.09.05 and as was the practice, the proceedings were written on the petition itself. On filing of the main petition, notices were ordered to be issued to the respondents for 5-02-96. On-5-02-96, counsels for the respondents appeared and it was ordered that WS be filed for 16-07-96. The order sheet dated 16-07-96 reveals that the WS was not filed by the respondents and therefore, WS was allowed to be filed on 26-11-96 but subject to payment of cost of Rs. 200/- each on 26-11-96. Cost of Rs. 200/- was paid to the petitioner. On 26-11-96, the matter was adjourned for 20-03-97. In between on 20-01-97, an application u/s 151 CPC was moved

furnishing full particulars of the driver of the offending vehicle and therefore, fresh notice was ordered to be issued to R-3 i.e. driver for the date already fixed i.e. 20-03-97. The proceeding sheet dated 20-03-97 is vital since it categorically records the attendance of petitioner through counsel, respondent no. 2 through his counsel Sh. Ram Narain Mishra while R-3 was not served. Time was again granted for filing of WS on behalf of R-1 and R-2, however, on the same date i.e. 20-03-97, it was again mentioned that the WS was filed on behalf of R-2 and copy was given to the opposite counsel and time was granted for filing of the rejoinder to the WS of R-2, if any, for the next date i.e. 13-10-97. On 13-10-97, 20-02-98, 28-08-98, R-3 i.e. the driver of the offending vehicle could not be served. Thereafter, on 7-01-99, counsel for the petitioners appeared who probably inadvertently stated that both R-2 and R-3 were yet unserved and that he would move the appropriate application for substituted service of R-2 and R-3. The application was moved during the course of the day and it was ordered that R-2 and R-3 be served by way of publication in the newspaper "The Statesman". On 20-07-99, both R-2 and R-3 were served by way of publication in the newspaper "The Statesman" dated 5-07-99 but since none appeared on their behalf, both R-2 and R-3 were granted time to file the WS for the next date and finally on 17-04-00, R-2 and R-3 were proceeded ex-parte.

It was the submission on behalf of the applicant that he was never served but the AD card Ex. DHW1/DH1 has been duly returned back on the file after service. The address on the AD card is RZ-6, Pratap Garden and it tallies with the address given in RC of the offending vehicle as admitted by the applicant in his cross examination. The address on the UPC Ex.DHW2/R1 and the publication made in the newspaper, all bear the address RZ-6, Pratap Garden. It was the applicant's assertion that his complete address was RZ-6-C, Pratap Garden but it was his own admission that the address on the RC was RZ-6, Pratap Garden. It was his assertion that at the time of issuance of RC, the papers of the vehicles as well as his ration card were furnished by him and therefore, if the RC bears the address RZ-6, Pratap Garden, it is to be assumed that the applicant accepted the address to be the correct address. During the course of arguments, the counsel for the applicant has stated that the claimant

had made a revision to the Transport Authority but neither any such application/revision was brought on record nor was any witness from the Transport Authority summoned to produce any record which would reveal that the applicant had challenged the address given in the RC of his vehicle to be an incorrect one. Furthermore, as already detailed above, the appearance of R-2 was made on record through a counsel and cost of Rs. 200/- was also paid to the petitioner on his behalf and his WS was also filed on record. The WS Ex.AW1/P3, as admitted by the applicant, bears his signatures. However, his explanation that he had not signed any WS but had signed on blank papers at the time of selling the vehicle to one Charanjeet Singh which has been mis-used does not inspire confidence at all. If the WS dated 16.07.96 along with his reply to the application u/s 140 of M.V. Act is to be perused, it is found that his signatures appear on the centre of the sheet. The signatures of the respondents are not misplaced or mis-aligned, as per any writing work done on a paper, which could be a pointer that the signatures had been obtained earlier and the writing work had been done later on. It is absolutely unbelievable that R-2/applicant would have given any blank papers to any person, since at the time of sale/purchase of a vehicle, certain printed forms are available which are duly filled up by the parties involved in the sale transaction. Had he signed blank papers which had been mis-used by R-2/applicant why he did not make any complaint to the police about any cheating/fraud being played by the said Charanjeet Singh on him. The presence of the WS on record clearly shows that the applicant had entered an appearance and was very much aware of the claim petition being filed against him which he was contesting. If after filing of the WS, he chose to be proceeded ex parte, then he has to bear the consequences. The presence of the WS of R-2 on record, totally obliterates an inadvertent order passed by the then MACT, ordering fresh service of R-2, by way of publication. This order does not help R-2/applicant in any manner whatsoever but rather establishes on record that a fresh notice was ordered to be issued to R-2/applicant so that he may put in an appearance again.

It is also to be noted that it was the own admission of the applicant that he came to know about any recovery proceedings pending against him, through the bailiff who was in possession of the

warrants of attachment issued against him. The address on the warrants of attachment/execution which was filed by the DH, was bearing the same address of applicant/R-2/JD which had been mentioned in the petition i.e. RZ-6, Pratap Garden, The applicant has admitted that the bailiff had come to him and therefore, he was obviously available at the given address, or could be served on the given address. Therefore, the assertions of the applicant that summons had been sent on a wrong address and therefore, he had not been served with notice of the main petition, are absolutely baseless and without merits.”

11. Noticeably, Ms. Lalita Setia, Santokh Singh or Charanjit Singh, or for that matter Ranjeet, were not impleaded as party respondents before the tribunal either in the claim petition or in the proceedings arising out of the application under Order 9 Rule-13 CPC. The petition under Article 227 of the Constitution of India, (CM main no.1324/2009) was also filed impleading only the claimants as respondents. When the appeal was filed, an application was moved under Order 1 Rule-10 CPC to implead the said three persons as respondents. Notices were issued by learned single judge on the said application and by order dated 28.01.2010, the said persons were impleaded as respondent nos.4 to 6.

12. The proceedings recorded on the appeal indicate that, at the instance of the petitioner/appellant Charanjit Singh, the person stated to be at the end of chain of transfers narrated was called to the court through local police and his statement was recorded on 04.03.2010. Charanjeet Singh, in the said statement, *inter-alia*, admitted that he is the owner of the offending vehicle. Interestingly, he also stated that Ranjeet Singh, *superdar* is his younger brother. He also stated that the offending vehicle was driven by Narpal Singh at the time of accident as his employee. He explained that after the

accident his younger brother Sukhvinder Singh had sold the offending vehicle. He stated that he was working as *sewadar* in Shish Ganj Gurudwara and receiving ₹5500/- per month as salary. He would not own any property and had no money in his accounts. His statement was further recorded on 26.03.2010 when he agreed that he would pay ₹3000/- per month to the first claimant (Mahender Pal Gupta) and that the said amount may be deducted from his salary and paid directly by Delhi Sikh Gurudwara Management Committee (DSGMC) to the said claimant. It is noted that this order was passed upon Mr. H. S. Phoolka, senior advocate intervening as mediator so that the controversy could be “amicably resolved”, but the matter referred to mediation in terms of the said offer made by Charanjeet Singh on 26.03.2010 does not appear to have resulted in any fruition. On 26.02.2013, it was submitted on behalf of the claimants that they did not want anything from Charanjeet Singh, thus insisting on the petitioner/appellant and the driver to be held accountable.

13. Having heard both sides, this court does not find any merit in the contentions urged on behalf the petitioner/appellant.

14. Since notice on the claim petition was sent at his then correct address by the tribunal and it was returned duly served, there is no reason why it should not be concluded that the petitioner/appellant had due notice of the said proceedings. The fact that an advocate actually appeared and filed written statement only confirms the said impression. It is inconceivable, as is the possibility suggested by the petitioner/appellant, that the claimants would go to the length of arranging an imposter to appear unauthorizedly for and on behalf of the petitioner/appellant in response to the notice duly

served at his registered address only to create a false impression on the mind of the presiding officer of the tribunal that the party had due notice.

15. In the facts and circumstances, the tribunal correctly rejected the contentions of the petitioner/appellant in the application under Order 9 Rule-13 CPC. This court finds the reasons set out by the tribunal in the said order to be sound and, thus, only joins its voice to that of the tribunal.

16. The claim of sale of the offending vehicle for consideration on 13.01.1993 to Ms. Lalita Setia cannot be accepted. Transfer by GPA or mere handing over blank form nos. 29 & 30 was no mode of transfer of motor vehicle. There is an obligation cast on the registered owner of the vehicle by Section 50 of the MV Act to inform the registering authority about the transfer (including by sale) of a motor vehicle. Admittedly, no steps in terms of Section 50 of the MV Act were taken. It may be added that change of residence also requires due intimation to the registering authority in terms of Section 49 of the MV Act. No steps are even claimed to have been taken under the said provision of law.

17. Since the vehicle could not have been transferred in the manner stated to Ms. Lalita Setia, the contention about sale to her cannot be accepted. Similarly, the story of sale by Ms. Lalita Setia to Santokh Singh by registered Will is devoid of any merit that also not being a permitted mode of sale of a motor vehicle. It is pointed out by the learned counsel for the claimants, that Ranjeet Singh had taken the offending vehicle on *superdari*. In the aforementioned facts and circumstances, it is clear that the criminal court had failed to exercise diligence or hold a proper inquiry as to the ownership of the offending vehicle at the time of its release. Mere release of

vehicle on *superdari* to a third person cannot be come in the aid of the person who has all along been the registered owner of the vehicle.

18. In the above facts and circumstances, the petition and appeal are dismissed.

19. The statutory amount deposited by the petitioner/appellant shall be made over as costs to the claimants.

20. The stay against execution stands vacated. The claimants are at liberty to take appropriate proceedings in that regard.

FEBRUARY 17, 2016
ssc

R.K. GAUBA
(JUDGE)

