

\$~5

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

Date of Decision: 19th February, 2016

+ **FAO 487/2012**

SUNIL KUMAR DAWAR

..... Appellant

Through: Mr. M L Mahajan, Adv.

versus

OM PRAKASH & ORS.

..... Respondents

Through: Mr. D K Sharma, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. A claim petition under Sections 166 and 140 of Motor Vehicles Act (MV Act) was filed on 20.09.1996 impleading Ms/ Harbans Lal Subhash Chander resident of W.Z.24, Ganesh Nagar, New Delhi; second address being O-85, Chanakya Place, Part-II, New Delhi as second respondent on the averments that the said party was the registered owner of half body truck No.DHL 225 which had caused the accident on 14.06.1996 in the area of Mangolpuri causing death of Bhim Singh aged 13 years giving rise to the cause of action for compensation to be claimed. The record of the Tribunal indicates that subsequently the said party respondent was substituted by Raju Dawar son of Harbans Lal resident of A-32, Ganesh Nagar, Main Najafgarh Road, Opp. B-1, Janak Puri, Check Post, New Delhi. The claim

petition appears to have been decided by the Tribunal by judgment dated 19.11.2003, *inter alia*, holding the said party respondent to be vicariously liable on conclusion to the effect that Om Prakash, first respondent before the Tribunal had driven the said vehicle in a negligent manner causing the accident. The Tribunal awarded compensation in the sum of ₹1,44,000/- and found the said driver and the second party respondent Raju Dawar to be liable to pay jointly and severally. New India Assurance Ltd. has already impleaded the third respondent in the claim petition. It was asked to indemnify and pay the awarded amount to the claimants.

2. On an application moved by the insurance company for review under Section 114 read with order 47 Rule 1 of the Code of Civil Procedure, 1908 (CPC), by order dated 09.02.2004, it was found that there had been a breach of terms and conditions of the policy as the driving license claimed to be in possession of the driver (Om Prakash) was a fake document. Thus, by the said order dated 09.02.2004, the insurance company was absolved of its liability, it having been granted the right to recover the awarded compensation from the second respondent (Raju Dawar) though after satisfying the award, in accordance with law.

3. An application under Order 9 Rule 13 CPC, however, was moved on 11.09.2006 by the Sunil Kumar Dawar son of Harbans Lal (the appellant before this Court) contending, *inter alia*, that the judgment had been passed *ex-parte* against Raju Dawar without any notice having been served upon him.

4. The abovesaid application was dismissed by the Tribunal by order dated 17.12.2007. The said order was challenged before this Court in FAO

No.30/2008, which was allowed by order dated 16.03.2011 setting aside the order dismissing the application under Order 9 Rule 13 CPC for the reason evidence had not been recorded and the contentions had not been inquired into. The Tribunal was directed to hold a proper inquiry giving opportunity for evidence to be adduced, *inter alia*, observing that the essential question for determination was as to whether the applicant Sunil Kumar (the appellant herein) has been served with the summons on the claim petition or not.

5. The Tribunal, by order dated 13.09.2012 has again dismissed the application under Order 9 Rule 13 CPC which is under challenge through the appeal at hand.

6. Having heard both sides, and on perusal of the impugned order, it is found that while reaching adverse conclusion the Tribunal has not applied its mind nor discussed the evidence which was adduced. During the pendency of the appeal the appellant had been allowed to examine Rajesh Kumar (CW1) Motor Licensing Officer, Headquarters Rajpura Road, New Delhi. The evidence of the said witness would show that the vehicle in question having been registered in the name of Harbans Lal on 06.05.1977 continues to be registered in the same name. It is the contention of the appellant that his father Harbans Lal, had died in 1992, four years prior to the accident. It is his contention that he has nothing to do with the vehicle after the death of his father, one of the co-owners of the vehicle.

7. The order impugned in the appeal cannot be sustained for the reason it does not deal with the contentions raised about non-service and also does not take note of the submission of the appellant that he had not inherited any

right, title or interest in the motor vehicle in question and, therefore, could not held accountable for paying the compensation.

8. In the above facts and circumstances, the matter is once again remitted to the Tribunal with a direction that a detailed reasoned order discussing the contentions and the evidence adduced be passed dealing with all the submissions of parties that are participating in the proceedings.

9. As requested, copy of the evidence and documents adduced during the proceedings on the appeal at hand shall also be sent to the Tribunal with its records.

10. The parties shall appear before the Tribunal for further proceedings in accordance within law on 03.03.2016.

11. The appeal is disposed of in above terms.

FEBRUARY 19, 2016
VLD

R.K. GAUBA
(JUDGE)