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

Date of Decision: 26th February, 2016

+ **MAC.APP. 1188/2014**

VINITA DEVI & ORS

..... Appellant
Through Mr. Deepak Maharaj, Adv.

versus

LAXMAN & ORS (SHRI RAM GENERAL INSURANCE
COMPANY LTD)

..... Respondent
Through Mr. Sameer Nandwani, Adv. for
insurance

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellants had filed a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the Tribunal) on 20.03.2013 which was registered as MAC petition No.31/2014(2013). The said claim petition, *inter alia*, alleged that Satyendra Mandal (the husband of the first appellant, son of the second appellant and father of the other appellants) was driver of the truck bearing No.UP 13Q 9364 (hereinafter referred to as "the truck") which was involved in a motor vehicular accident that had occurred on 06.01.2013 near Bharat Gas Plant, Loni, Ghaziabad, UP with the other vehicle described as Tata 407 bearing registration No.UP 17T 4443

(hereinafter referred to as “Tata 407”) driven by Laxman (the first respondent before the Tribunal), it being owned by Raj Kumar (the second respondent before the tribunal) and insured with Shriram General Insurance Company Ltd. (third respondent before the tribunal). The Tribunal issued notices to the said respondents who appeared and contested the case.

2. The driver and owner of Tata 407 filed a joint written statement, *inter alia*, denying negligence on the part of the former (the driver) and stating that the accident had occurred due to rash/negligent driving of the truck by Satyendra Mandal, the driver of the truck, adding that one Harinder who was travelling in Tata 407 which had been hit, had expired while Satyendra had fled from the spot immediately after the collision and further that this was the subject matter of investigation by the local police which had registered a first information report (FIR) No.16/2013 on 06.01.2013 in police station Loni District Ghaziabad, UP for offences under Sections 279, 388 and 304A of Indian Penal code, 1860 (IPC). The insurer of Tata 407, in its written statement, admitted insurance cover but denied liability to pay compensation or indemnify.

3. The Tribunal held inquiry in the course of which the appellants (the claimants) led evidence by examining Ranjeet Tiwari (PW1), Vinita Devi (PW2), Vinod Mandal (PW3) and Ram Kumar Mandal (PW4). It may be mentioned here itself that the evidence of the witnesses other than PW4 relates to the status, employment and earnings of Satyendra Mandal which have a bearing on the calculation of compensation, if found awardable in the matter. PW4, on the other hand, was presented as an eye-witness to the occurrence of the accident wherein the two said vehicles had collided

against each other and which, according to the case set up by the claimants, had occurred due to rash/negligent driving on the part of the driver of Tata 407 (the first respondent in the appeal) and had resulted in death of Satyendra Mandal. No evidence was led by the respondents.

4. The Tribunal considered the evidence adduced, which included the copy of the FIR No.17/2013 which had been registered in PS Loni on 07.01.2013 at the instance of Anil Kumar son of Bhagwat, an employee of Triveni Road Career Pvt. Ltd., which owned the truck that was driven by Satyendra Mandal on 06.01.2013 along with a copy of the report under Section 173 of Code of Criminal Procedure, 1973 (Cr.P.C.) which had been submitted by the police on completion of investigation into the said FIR. It may be added that the copy of FIR No.16/2013 which was referred to by the driver and owner of the Tata 407 had earlier been filed on record by the said parties. The documents submitted would also include copy of the post mortem examination report of Satyendra Mandal, who according to the FIR No.17/2013 (Ex.PW2/A) had been found lying dead near the gate of Bharat Gas plant within the jurisdiction of police station, Loni, Ghaziabad in the morning of 07.01.2013.

5. The Tribunal dismissed the claim petition by judgment dated 13.10.2014, holding that the appellant had failed to prove that Satyendra Mandal had died as a result of injuries suffered in the motor vehicular accident or that it been caused on account of involvement or negligence on the part of the driver of Tata 407.

6. It must be noted here that even while dismissing the claim petition on above mentioned conclusions, by a short order recorded on the file of the

claim petition on the same date, a different impression was given. The short order may be extracted as under :

“MACP No.31/14

13/10/2014

*Present: Shri Deepak Maharaj, counsel for claimant.
Ms. Shruti Bhasin, counsel for insurance company.*

Vide separate order, compensation is awarded to the petitioner with interest.

Nazir shall prepare the miscellaneous file containing the copy of the award and put up the same immediately after the expiry of ninety days from the date of decision alongwith the status report of the payment, after taking from the Nazir of this Tribunal.

*Copy of the award be given to both the parties.
(Free of cost.)*

File be consigned to Record Room.

*(Deepak Jagotra)
PO, MACT (South-west)
Dwarka Courts, New Delhi
13/10/2014”*

7. It is clear that the presiding officer of the Tribunal had passed the aforementioned short order mindlessly. The claim petition having been dismissed, there was no occasion for such order to be passed stating that compensation had been awarded with interest or for *Nazir* to be called upon to open a miscellaneous file or, for that matter, for status report regarding payment to be called for. It is hoped the judicial officer would exercise better care in future.

8. The reasons set out by the Tribunal to disbelieve the case of the claimants read as under :-

“9. In order to prove this issue PW-2 Sh. Vinita W/o deceased Satyendra Mandal has come in the witness box and in her evidence she has stated that on 06/01/2013 her husband has died in a Road Traffic Accident near Bharat Gas Plant, Loni Gaziabad when he was driving his truck. She has proved FIR 17/13 dated 07/01/2013, postmortem report, site plan, charge sheet which are Ex. PW2/A to Ex. PW2/D. Admittedly, she is not an eye witness to the accident, therefore, her evidence qua the negligence of either of the parties is of no consequence.

10. PW-3 Vinod Mandal has also stated on the same lines as that of PW-1 with an addition that dead body was brought to the hospital in his presence and the postmortem was got conducted by the Doctor concerned.

11. All important witness brought by the claimant is PW-4 Ram Kumar Mandal who in his statement has stated that deceased had died in his presence on 06/01/13 near the Bharat Gas Plant due to rash and negligent driving of driver of vehicle no, UP-17T-4443 make of 407 who was driving his vehicle from wrong side. In the cross examination it is elicited as under;-

"At the time of accident I was taking tea at a tea stall. When I heard a loud noise I saw that there was a head on collision between two trucks. The truck bearing no. U-17T-4443 was coming from the wrong side and had hit truck no.UP-13Q-9364 who was on the right side. The driver of UP-13Q-9364 was struck up in his truck after the accident. The other truck overturned after the accident. The other truck overturned after the accident. Several milk sellers travelling in that truck were injured. No fatal injury took place to the driver or passengers of the said truck. In spite of our best efforts the driver of truck bearing no. UP-13Q-9364 could not be pulled out as he was so badly stuck up in the accident. I had not called the police. However, a large crowd had gathered and I do not know who called the police. Police was informed on the same date. The police by breaking the door of the truck took out the

victim. Punchnama was prepared by the police on the next day. I do not know the date of registration of complaint by the police. The body was taken to hospital for postmortem on the next day".

12. From the above it could be seen that as per his version the alleged offending vehicle bearing no. UP-17T-4443 came from the wrong side and hit the truck of the deceased bearing no. UP-13Q-9364 who was on the correct side. He further says that the body of the deceased got stuck in the accident which was taken out by the police, after breaking the door of the truck.

13. It is important to note that the FIR in this case was registered on the statement of one Anil Kumar S/o Sh. Bhagwat who had stated in his FIR that Satyender Mandal was the driver of their Triveni Road Career Pvt. Ltd. Company whose truck met with an accident with TATA 407 UP-17T-4443 on 06/01/2013 near Bharat Gas Plant, Loni, Gaziabad. At that time the truck was being driven by Satyender. It is further mentioned that on 7/1/13 Sh. Sayender Kumar was found dead in front of the gate of Bharat Gas Plant, Loni, Gaziabad. One important point that emerges from the above is that no one had informed the police on 6/1/13 when the accident had happened. Somebody must have informed the police if deceased had died in the accident.

14. The statement of PW-4 does not matches with the FIR as according to him " the police by breaking the door of the truck took out the victim". In order to unravel the mystery the written statement filed on behalf of R1 & R2 may be looked into where they have mentioned that after the accident the deceased Satyender Mandal fled from the spot.

15. In this regard one FIR no. 16/2000 dated 06/01/2013 was registered on the statement of one Sh. Ravinder S/o Sh. Harish Chand wherein it has been mentioned that on 06/01/2013 his nephew Harinder S/o Leelu and 10-12 other milkman were travelling on vehicle bearing no. UP-17T-4443 along with the milk to Delhi. It is further mentioned that as the vehicle approached Bharat Petrol Pump one vehicle bearing

no. UP-13Q-9364 was driven in rash and negligent manner and hit their TATA 407. Due to the impact their vehicle overturned at the spot and milkmen & driver received injuries. He further stated that the driver of offending vehicle fled from the spot.

16. Now comes the all important document which is postmortem report prepared by Dr. A. K. Singh, Medical Officer, Incharge, District Mortuary Gaziabad. In the postmortem report, it has been clearly mentioned that "there were no external injury seen on the body and mud present on the body". On scrutiny of postmortem report it is also found that 100 ML of mud was present in the intestine of the deceased. The cause of death was opined as "death due to asphyxia as a result of ante mortem drowning". From the postmortem report it is absolutely clear that deceased Satyender Mandal mentioned as Sayender Kumar in postmortem report died due to drowning and not in a Road Traffic Accident.

17. In a case of such magnitude where two heavy vehicles collided with each other and the body of Satyender Kumar could not be taken out as a the same was stuck in the vehicle, it is intriguing to note that not even a scratch injury was found present in the body of the deceased as per postmortem report. The natural corollary is that the cause of death is not in the manner stated by PW-4. Rather the version given by respondents that after the accident Satyender Kumar fled away from the spot which is also mentioned in FIR no. 16/13 is believable, when we connect the same with the postmortem report where the cause of death has been clearly mentioned as "death due to asphyxia as a result of ante mortem drowning". Therefore, deceased Satyender Mandal died due to "drowning" and not because of "road traffic accident" as mentioned by the claimants. The claimant /petitioners have miserably failed to prove their case even below a decree of preponderance of probability."

9. The learned counsel for the appellant submitted that the Tribunal failed to take note of the fact that Ram Kumar Mandal (PW4) was a witness cited by the appellants in the charge-sheet that had been prepared and submitted on conclusion by the investigation into FIR No.17/2013 as had been registered after the dead body of Satyendra Mandal had been discovered on the morning of 07.01.2013. A copy of the charge sheet arising out of the said FIR has been perused. It indicates that the investigating police had not found any evidence confirming the claim that Satyendra Mandal had died as a result of acts constituting offence punishable under Section 279 IPC. The charge sheet clearly declares that no such evidence having come up, no prosecution of any person on that account was being pressed. The claimants are unable to show that the concerned criminal court took any different view on the said police report or that the driver of Tata 407 was summoned on the basis of any additional material, inclusive of the evidence of PW4, to stand trial on the allegations that it was on account of rash or negligent driving of Tata 407 by him that Satyendra Mandal had suffered injuries leading to his death.

10. As noted by the Tribunal in the impugned judgment, in the FIR No.16/2013 lodged immediately after the offence on 06.01.2013 by one Ravinder, the driver of the truck (which would be a reference to Satyendra Mandal) had fled away from the scene immediately after the collision in which Harinder, a person travelling in Tata 407, had suffered serious injuries and had died during treatment in hospital.

11. There is indeed a huge hiatus between the version noted in FIR No.16/2013 and the one noted in FIR No.17/2013. The circumstances that

have been brought out show that Satyendra Mandal, after collision between the two vehicles, had fled away from the scene sometime around 6.30 PM, on 07.01.2013. His dead body was found elsewhere near the gate of Bharat Gas plant. The post mortem examination report, relied upon by the claimants themselves, shows that Satyendra Mandal had not suffered any external injuries and that he had died due to asphyxia as a result of ante mortem drowning. This, the tribunal correctly noted, shows that death of Satyendra Mandal had not occurred in a motor vehicular accident but for some other reasons and in circumstances not as those narrated by PW4.

12. The reliance by the appellants on judgment of Supreme Court in *Kishan Gopal v. Lala* (civil appeal No.7137/2013) decided on 26.08.2013 and of a learned single judge of this Court in *United India Insurance Co. Ltd. v. Deepak Goel* (MAC.APP.No.750/2006) decided on 24.01.2014 is misplaced as the fact situation here is distinct.

13. The appeal is devoid of substance and is dismissed.

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

FEBRUARY 26, 2016/VLD