

\$~1

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

Date of Decision: 27th January, 2016

+ CM(M) 1027/2015 & CM No.24448/2015 (stay)

MAHESH CHAND GUPTA

..... Petitioner

Through Ms. Rakhi Dubey, Adv.

versus

KALU RAM & ORS

..... Respondents

Through Mr. D Hasija, Adv. for R-1 to 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Lack of proper assistance by the learned counsel representing the parties, and inept handling of the proceedings by the Tribunal, have led to unnecessary confusion compelling one of the respondents to approach this court through the petition at hand.

2. A claim petition was filed in 2009 under Sections 166 and 140 of Motor Vehicles Act, 1988 by the legal heirs of Naresh Kumar seeking compensation on account of his death in a motor vehicular accident on 15.05.2008 impleading the petitioner herein as the second respondent, describing him as the registered owner of the offending vehicle which was involved in the said accident. The petitioner herein submitted his written statement on 12.05.2009, *inter alia*, stating that the vehicle had

already been sold to one Mohd. Nafees Khan on 07.05.2008, i.e., before the accident. During the inquiry, the petitioner filed his affidavit in evidence on 05.01.2013 whereupon the matter was adjourned to 02.03.2013 for his cross-examination thereupon as also for the evidence of the insurance company. Presumably taking note of the said pleadings and the affidavit, the Tribunal, by order dated 27.04.2013 impleaded the said Mohd. Nafees Khan as fourth respondent in the claim petition directing issuance of notice to him. The said (fourth) respondent was served and even put in appearance to be given time to file reply. Since no reply was forthcoming, in spite of several opportunities, the right to file reply on behalf of the said fourth respondent was closed on 19.04.2014 and the matter adjourned for respondent's evidence/final arguments to be heard on 17.05.2014. On the said date, on the request of the insurance company, the matter was adjourned for RE (respondent's evidence), without the Tribunal ascertaining from the petitioner, who was present in person, as to status of his evidence.

3. The matter remained hanging fire at the afore-stated stage till 06.04.2015, when the insurance company submitted through counsel that it did not wish to lead any evidence. The petitioner was again present with counsel but the Tribunal would not ask him as to the status of his evidence and, by order dated 06.04.2015 case was adjourned to 03.06.2015 for final arguments.

4. On 04.07.2015, when the presiding judge was not holding the court, the petitioner moved an application under Order 18 Rule 17 CPC insisting on opportunity for evidence to be adduced on his behalf. The reader, in absence of the presiding officer, adjourned the case to

06.08.2015 for the “purpose fixed”.

5. On 06.08.2015, the petitioner was not present. The presiding judge failed to take note of the previous order sheet dated 04.07.2015 wherein an application under Order 18 Rule 17 CPC had come to be preferred. The case was adjourned for final arguments to “24/9/2016”.

6. Even though the case had been adjourned to 24.09.2016, presumably a typographical error, no one pointed it out to the Tribunal nor the Tribunal cared to incorporate suitable correction for record. Assumably, the parties and the Tribunal had taken the date of adjournment as 24.09.2015 when they duly assembled. It is the order passed on 24.09.2015 which is the bone of contention in the petition at hand. It reads as under :

“538/09/2014

Kalu Ram Vs. Mohd. Azim

24.09.2015

Present : Proxy counsel for the petitioner.

R1 already Ex-parte

Sh. S K Singh, Ld. Counsel for R2

Sh. J P N Shahi, Ld. Counsel for R3/Insurance Company

Today the matter is fixed for final arguments. However, it is submitted by the Ld. Counsel for the R2 that an application U/Sec. 18 Rule 17 CPC is pending for disposal.

Heard. Seen.

It is mentioned in the para No.5 of the applicant that applicant/R2 was aware from May 2014 that the matter is fixed for RE/Final arguments. Still he is not preferred any RE. This is an Old matter pertaining to the year 2009 and facts of the case are within the knowledge of the applicant/R2. In view of the facts and circumstances of the case, application is dismissed. Some time is sought for

addressing the arguments. Put up for final arguments on 15.10.2015.

*(Jitendra Mishra)
PO, MACT, Dwarka Courts ”*

7. This Court finds the view taken by the Tribunal in the afore-quoted order not only erroneous but against the record. The evidence in the form of affidavit of the petitioner, as noted above, had already come on record on 05.01.2013. In the given facts and circumstances, wherein he had taken a specific position about having sold the vehicle before the accident to another person, in all fairness he deserved an opportunity to prove his contentions. The order dated 24.09.2015 dismissing his application and closing the opportunity for defence evidence, thus, cannot be sustained.

8. The petition is allowed. The impugned order is set aside.

9. The petitioner is held entitled to adduce evidence before the Tribunal. It has been submitted on his behalf by his counsel that the only evidence to be adduced is in the form of affidavit already on record which needs to be only formally tendered and the documents submitted therewith to be formally proved and exhibited, of course, with a right to the opposite parties to cross-examine. The learned counsel for the respondents (claimants) now submits no objection.

10. It is directed that the Tribunal shall take up the claim case on 08.02.2016 when the petitioner shall tender his affidavit in evidence and offer himself for cross-examination by the opposite parties. The petitioner shall be duty bound to inform the other parties who have appeared and are participating in the proceedings, through their counsel about the said date well in advance.

11. The petition is disposed of with these directions.
12. The amount of Rs.20,000/- deposited by the petitioner in terms of order dated 20.10.2015 shall be refunded.
13. Copy of the order be given dasti.

R.K. GAUBA
(JUDGE)

JANUARY 27, 2016
VLD