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

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Decided on: 26th April, 2017

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MAC.APP. 359/2012 & CM Nos.6153/2012, 550/2016

NISHANT GOYAL

..... Appellant

Through: Mr. Vishwendra Verma, Advocate.

Versus

RAM DULARI & ORS.

..... Respondents

Through: Mr. Sunil Satyarthi and Mr. Raman Gandhi, Advocates for Respondents No.1 to 4.

Mr. Pankaj Kumar Sharma, Advocate for Respondent No.5.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant has impugned the compensation awarded on 09.08.2011 to the mother and minor children of the deceased/accident victim. The appellant contends that the vehicle, being a Maruti Van bearing Registration No. DL2CJ6269, was not involved in the accident, no evidence was led to prove that the said vehicle was involved in the accident and that the Mechanical Inspection Report of the vehicle was not prepared at the time of the accident. It is argued that Smt. Ram Dulari/respondent No.1, mother of deceased Maharaj Singh deposed that she did not have documentary proof apropos her deceased son's income

at the time of the accident, The learned counsel for the appellant refers to her cross-examination recorded on 01.11.2010, which reads as under:-

" The deceased was earning Rs.20000/- per month while working as a Gardener in a nursery in the area of Uttam Nagar. I cannot tell the name of the nursery. I cannot say as to how I stated that the deceased was earning Rs.20,000/-. I do not know if I stated so in my claim petition."

2. He also refers to her conflicting pleadings in her affidavit in evidence which reads as under:-

"3. The deponent stated that accused no.2 (driver Sh. Sunil of the maruti van bearing no.DL-2CJ-6269) was being driven in a rash and negligence manner hit the deceased Maharaj Singh and due to that accident the deceased was dead. The deponent further stated that the owner of the maruti van bearing no.DL-2CJ- 6269 is Sh. Nishant Goyal s/o Sh I.C.Goyal r/o c-4/152 Yamuna Vihar Delhi. The copy of the registration certificate of the maruti van bearing no.DL-2CJ-6269 is exhibited as PW1/10."

3. He contends that this deposition demolishes the very evidence on which the entire case is based i.e. the particulars of the vehicle involved in the accident and the averment that the deceased was earning an amount of Rs.20,000/- per month were never established. He argues that it has also not been proven that the injuries sustained by the victim Maharaj Singh because of the accident, resulted in his death.

4. The learned counsel for the respondents however submits that the identity of the vehicle had been established on the basis of the FIR recorded on the date of the accident i.e. 21.08.2007. It records that the driver of the vehicle admitted to the fact that he himself was driving the vehicle at the time of the accident, after which he brought the victim in a TSR to the

hospital where the latter was declared brought dead. The FIR also records that the Head Constable and Constable who visited the site found the vehicle i.e. Maruti Van bearing registration No.DL 2CJ 6269 and the cycle on which the deceased was riding. The Constable was directed to stay at the site and the Head Constable proceeded to go to the hospital.

5. On the issue whether the deceased Maharaj Singh sustained fatal injuries in the aforementioned accident due to rash and negligent driving of vehicle No.DL2CJ 6269 driven by respondent No.2 and owned by respondent No.1, the Trial Court observed as follows:-

“19. Petitioner no. 1 has filed her affidavit Ex.PW1/1 and deposed on the very same lines as mentioned in the petition. She also placed on record the certified copy of criminal proceedings Ex. PW 1/6 to PW1/9 of the case registered vide FIR no. 893/07 registered at the police station Malviya Nagar. She stated that respondent no. 2 Sunil Kumar was driving the vehicle at the time of the accident in a rash and negligent manner and hit the deceased.

20. From the testimony of the above witness and the record, it is clear that accident took place due to driving of the maruti van by R-2 as he was driving the vehicle in a rash and negligent manner and without obeying the traffic rules. The certified copies of criminal proceedings, duly corroborate the deposition of PW1 that respondent No. 2 failed to adhere to his duties and had driven the offending vehicle in a negligent manner. Testimony of PW1 shows that R-1 was the owner of the maruti van.”

6. The Trial Court relied upon the dicta of the Guwahati High Court in ***Ranu Bala Paul and Ors. V/s Bani Chakraborty and Ors., 1999 ACJ 634*** and of the Supreme Court in ***N.K.V.Bros(P) Ltd. V/s M.Karumal Ammal & Others. (1980) 3 SCC.***

7. The learned counsel for the appellant states that a criminal case was instituted under Section 279/304A of the Indian Penal Code against Mr. Sunil Kumar, the driver of the vehicle at the time of the accident, this driver has been acquitted after being given the benefit of doubt in the said case. The relevant portion of the judgment of the Metropolitan Magistrate in the aforesaid criminal case dated 25.02.2017 records as under:

“An accident resulted in the death of a passerby Sh. Maharaj Singh is not disputed by the accused but that it was caused by the accused is disputed and it was required of the prosecution to prove beyond reasonable doubt that the accident was caused by the accused and was a result of rash or negligent driving by him.”

8. In the circumstances, the fact that the vehicle was involved in the accident, that it was impounded and subsequently kept in police custody, is not in dispute. The present appeal has only to do with the vehicle which was involved in the accident. The learned counsel for the appellant argues that the vehicle had already been sold by the appellant to a third party before the accident. The Court notes that however, in his written statement, the appellant denied that the accident had taken place with the alleged offending vehicle. the relevant portion reads as under:-

“16. That the contents of para 16 of the petition are wrong and denied, because no accident took place with the alleged offending vehicle, hence the respondent No.2 did not

commit any accident with the injured person.

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23. *That the contents of para 23 of the petition are wrong and denied. It is submitted that no accident took place with the Maruti Van No.DL-2CJ-6269 and the respondent No.2 never driven the vehicle in rash and negligent manner and hit the deceased Maharaj Singh. It is submitted that the said vehicle was not in possession of the answering respondent. Rest of the averments are denied for want of knowledge. It is submitted that the respondent No.1 is the owner of the vehicle but the vehicle is not the offending vehicle. There is no question of vicarious liability as no accident took place with the above said vehicle. Hence not liable to pay any compensation.”*

9. This written statement was filed on 05.11.2009. In his evidence by way of affidavit dated 09.02.2011, the appellant stated as under:-

“3. *That it is submitted that no accident took place with Maruti Van No.DL-2CJ-6269 and the respondent No.2 never driven the vehicle in rash and negligent manner and hit the deceased Maharaj Singh. It is submitted that the respondent No.1 was the owner of the vehicle but the vehicle is not the offending vehicle. There is no question of vicarious liability as no question of vicarious liability as no accident took place with the above said vehicle. Hence not liable to pay any compensation.*

4. *That said vehicle Maruti Van No.DL-2CJ-6269 was sold to Shri Rajesh vide Sale Letter and affidavit. Hence there is no question that the said vehicle was ever driven by the respondent No. 1 as alleged. The said documents were lost on 05.02.2009 and in this respect I filed the NCR No.270/22009 to the Police Station Bhajan Pura.”*

10. The appellant intimated the police by a Non-Cognizable Report (NCR) dated 05.02.2009 apropos the loss of his Voter Identity Card and Sale Letter of the aforesaid vehicle. Evidently, this report was filed much after the accident which claimed the life of deceased Maharaj Singh on 21.08.2007. Hence, the same would not be of any relevance or assistance to the appellant's case. The appellant's contention that the NCR was never denied or disputed by anybody is of no consequence because the NCR was filed much after the fatal accident. Furthermore, in the case of **Rajinder Kumar Vs. Smt. Neelam Gadhok and Ors. 2008 (103) DRJ 628** it was held as under:

"It would be thus evident that mere intimation of transfer by the transferor to the registering authority would not suffice to fulfil the requirements of Section 50 of the Motor Vehicles Act because such transfer of the vehicle has to be reported to the registering authority as per the norms prescribed by such registering authority. Reference to the term 'owner' under Section 168 of the Act is to the registered owner of the vehicle and not to the transferee whose name has yet to come on record. The Apex Court in Dr.T.V. Jose's case (supra) in Para 10 of the judgment has clearly held that the transferor shall continue to remain liable to third party so long his name continues in the records of RTO as owner. In the facts of this case also evidence produced on record showed that the ownership of the offending vehicle involved therein was transferred only on 18.12.1996 and prior to that in the records of the registering authority the name of the transferee was not yet entered. Para 10 of the said judgment for better appreciation is reproduced as under:

10. We agree with Mr Iyer that the High Court was not right in holding that the appellant continued to be the owner as the name had not been changed in the records of RTO.

There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as the owner. The appellant could not escape that liability by merely joining Mr Roy Thomas in these appeals. Mr Roy Thomas was not a party either before MACT or the High Court. In these appeals, we cannot and will not go into the question of inter se liability between the appellant and Mr Roy Thomas. It will be for the appellant to adopt appropriate proceedings against Mr Roy Thomas if, in law, he is entitled to do so."

11. Thus, it is clear that the vehicle was registered in the name of the appellant and that is all that the Court is concerned with to establish the liability. In the circumstances, the identity of the vehicle having been established, the liability of the appellant has been rightly fixed.

12. Apropos the contention of the appellant that negligence on the part of the driver was not proved beyond reasonable doubt, it was observed by this Court in ***National Insurance Company Ltd v Smt. Pushpa Rana & Ors.*** 2008 (101) DRJ 645 as under:

"The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgement of the Hon'ble Supreme Court in Oriental Insurance Co.Ltd. Vs. Meena Variyal; 2007 (5) SCALE 269. On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case

against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."

13. It is settled law that cases pertaining to motor vehicle accidents do not have to follow the strict rigours of the rules of evidence and a decision has to be made on the basis of supporting evidence and other documents including the FIR, mechanical inspection report and other evidence as may be available. Since the appellant has not been able to establish that the vehicle was sold before the accident, he will be the deemed owner of the offending vehicle.

14. For the foregoing reasons, the Court finds no reason to interfere with the impugned Award. The appeal and the pending applications are accordingly dismissed.

NAJMI WAZIRI, J.

APRIL 26, 2017

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