

\$~R-198

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

Decided on: 13th September, 2017

+ **MAC APPEAL 262/2010**

ANAR SINGH & ORS.

..... Appellant

Through: None

versus

KAMLESH & ORS.

..... Respondents

Through: Mr. Shoumik Mazumdar, Adv.
for R-7

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sonu Pal @ Hemant, 18 years old at the relevant point of time, statedly engaged in a private employment, suffered injuries and died in a motor vehicular accident that occurred at about 5.00 pm on 11.06.2004 when he was riding on the pillion of a bicycle, it being hit by the bus of Delhi Transport Corporation bearing registration no.DL-1PB-5218, admittedly insured against third party risk for the period in question with the seventh respondent (insurer). Two accident claim cases came to be instituted seeking compensation on account of the said death, one, (suit no.11/09/08/06, old suit no.158/08/06) submitted on 03.07.2004 by the first to fourth respondents herein (i.e. Kamlesh and her three daughters, the former claiming to be the wife of Amar Singh @ Anar Singh and the mother of the deceased, the rest being his

siblings) and the other (suit no.12/09/06, old no.159/08/06) submitted on 09.05.2005 by the appellants herein (i.e. Anar Singh, Veena Pal and their daughter Priya Pal, the former indisputably the putative father of the deceased, the second described by him as his wife and the mother of the deceased and the third, being their child). Pertinent to note here that the first respondent (Kamlesh), in her pleadings, had stated that Amar Singh @ Anar Singh (the first appellant) had deserted her and had started living with the second appellant (who she would describe as Beena @ Guddi) while the first and second appellants in their pleadings would claim that the deceased was born out of their cohabitation, Kamlesh, she and those joined by her as co-claimants having no relation with him.

2. The Motor Accident Claims Tribunal (Tribunal) clubbed both the claim petitions and held a common inquiry on the conclusion of which it returned a finding that the deceased was indeed the son born to first respondent Kamlesh out of her wedlock with first appellant who had deserted her to start living with the second appellant, the third appellant taking birth out of their co-habitation. By the said judgment, the tribunal held that the accident had occurred due to the negligent driving of the DTC bus. It proceeded to determine the compensation in the total sum of Rs.6,23,000/- and fastened the liability on the insurer to pay, the amount of compensation having been apportioned in favour of the first to fourth respondents (i.e. Kamlesh and her co-petitioners).

3. The appeal at hand was filed by Anar Singh and his co-petitioners reiterating their contention noted above taking exception to the award granted in favour of the other set of claimants.
4. By order dated 26.04.2010, the entire awarded amount was directed to be put in fixed deposit and not to be released to any of the claimants. By order dated 15.03.2011, the appeal was admitted and directed to be listed in regular matters to be taken up on its own turn. When the appeal is taken up for hearing, there is no appearance on either side except for and on behalf of the insurance company.
5. With the assistance of the learned counsel for the insurer, the record has been perused.
6. Anar Singh had examined himself as a witness (R3W1) on the strength of his affidavit (Ex.R3W1/A) in which he would assert that the deceased was born out of his wedlock with the second appellant Veena Pal who was thus the natural mother of the deceased, the birth having taken place on 22.08.1987 in Kannauj, U.P., reliance also being placed on birth certificate (Ex. RW3/6) and extract of *Kutumb* register (Ex. RW3/7), this besides certificate issued by Jawahar Navodaya Vidyalaya, Ministry of Human Resources Development, Deptt. Of Education, Govt. of India (RW3/9) indicating Veena Pal to be the mother of the deceased. He also placed reliance on certain photographs (Ex. RW3/10) wherein the deceased statedly is shown in his company and that of Veena Pal and the third appellant.
7. The second appellant Veena Pal also appeared as witness (R3W5) on the basis of her affidavit (Ex. R-5) in which the above facts were reiterated by her. Sidh Shree (R3W4), cousin sister of

Veena Pal also appeared to affirm that Hemant was born to Veena Pal, he being the son of Anar Singh.

8. The appellants examined Om Prakash Kashyap (R3W2), Gram Vikas Adhikari, Vikas Khand Shauri, Tehsil Sibramau, District Kannauj, U.P. to prove the relevant extract from the *Kutumb* register of Anar Singh's family, as per copies (R3W2/A and B), it being conceded that there was no reference in the record to any application or verification regarding marriage of Anar Singh with Veena Pal.

9. The school leaving certificate (Ex. PW6/A) was sought to be proved through Sri Ram (R3W3), a teacher of Jr. High School Mau, Gouri Ganj, Sultanpur, U.P. respecting a student named Hemant Kumar son of Anar Singh, the witness clearly deposing that the school record would show that such person had never studied in the said institution. Omkar Sharma (R3W6), assistant of Secondary Education Council of Uttar Pradesh at Allahabad was examined to bring on record the certificate and admission certificate (Ex. RW3/8) regarding matric examination taken by Hemant Kumar Pal in 2002, the original record relating to examination, however, being not available, the same having been weeded out.

10. In contrast, Kamlesh appeared as witness (PW-4) on the strength of her affidavit (Ex. PW4/A) to affirm on oath that Sonu Pal @ Hemant was her son who had died in the road accident on 11.06.2004. She stated that besides the said son, she had three daughters, two of them being elder to the deceased, he having studied in a school in Rampura, Delhi, and thereafter, in a school In Farukhabad, U.P. and eventually studying from seventh to tenth in

Govt. Boys Sr. Secondary School, H Block, Sultan Puri, Delhi. She proved admission card (Ex. PW4/3), marks-sheet issued by CBSE (Ex. PW4/4), registration card (Ex. PW4/5), marksheet (Ex. PW4/6) as the documents in corroboration. She also proved her involvement in the last rites of the deceased by bringing on record the cremation ground receipt (Ex. PW4/10), the evidence of Sanjay Kumar (PW-5) producing the cremation ground register corroborating her said claim.

11. The claimant further relied on the evidence of P.R. Balai (PW-6), Admission Incharge of the Govt. Boys Sr. Secondary School, H Block Sultanpuri, Delhi, who proved, amongst others, the school leaving certificate (Ex. PW6/A), the record of admission (Ex. PW6/B & C) clearly bringing out the name of Kamlesh having been recorded as the mother and that of Anar Singh as the father.

12. The evidence of Kamlesh finds corroboration from the testimony of Sumitra (PW-1), the mother of Anar Singh, who testified that Anar Singh had married Kamlesh and the deceased was born out of their wedlock, the three co-petitioners of Kamlesh being their daughters. She affirmed on oath that the relationship with Anar Singh had strained and that the deceased was living with his mother at the time of incident. The word of Sumitra (PW-1) was also reinforced by her daughter Prem Wati (PW-2) who would be *bua* of deceased (sister of Anar Singh) who was also categorical in stating that the deceased was born to Kamlesh out of her wedlock with Anar Singh, she clarifying that Anar Singh was living with another woman. Reliance was also placed on the evidence of Bharpai (PW-3), co-worker of Kamlesh and Karamvir (PW-7).

13. Rohtas (PW-8), Assistant of Central Board of Secondary Education (CBSE) proved the record (Ex. PW8/A) about the deceased having cleared the secondary school examination, such record clearly reflecting the name of Kamlesh and Anar Singh as the mother and father of the deceased Hemant Kumar.

14. The tribunal found the evidence led by Kamlesh to be worthy of reliance and, in the opinion of this court, for weighty reasons. Apart from the oral word of the first and second appellant, resonated by other witnesses produced, closely related to them, great stress was laid on the birth certificate (Ex. RW3/6). The said document, the tribunal has correctly concluded, was not proved in accordance with law. No record on the basis of which such certificate had been issued was produced. The school records produced at the instance of Kamlesh, however, clearly show that the deceased was living with her till the time of his death, he having studied upto the level of secondary school, the school record consistently maintaining that he was her son born out of her wedlock with Amar Singh.

15. In the above facts and circumstances, this court finds no good reasons to disturb the findings on facts returned by the tribunal. The appeal by Anar Singh and others is found devoid of substance or merit and, thus, is dismissed.

16. The stay against release of the compensation awarded in favour of the first to fourth respondents is vacated.

R.K.GAUBA, J.

SEPTEMBER 13, 2017

yg