

\$~R-325 to R-327

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

Decided on: 13th October, 2017

+ MAC APPEAL 384/2011

V.K. SHARMA Appellant
Through: Mr. S.M. Suri, Advocate

versus

RAJWATI & ORS. Respondents
Through: Mr. Priyadarsi Acharya for Mr.
K.L. Nandwani, Advocate for
R-8

+ MAC APPEAL 388/2011

V.K. SHARMA Appellant
Through: Mr. S.M. Suri, Advocate

versus

UMA SHANKAR & ORS. Respondents
Through: Mr. Priyadarsi Acharya for Mr.
K.L. Nandwani, Advocate for
R-3

+ MAC APPEAL 392/2011

V.K. SHARMA Appellant
Through: Mr. S.M. Suri, Advocate

versus

SUMAN SHARMA & ORS Respondents
Through: Mr. Priyadarsi Acharya for Mr.
K.L. Nandwani, Advocate for
R-3

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

JUDGMENT (ORAL)

1. On 10.07.2005, a motor vehicular accident took place involving two vehicles, one being Maruti Van bearing registration no.DL-2CR-9406 (van) and, the other, a stationary bus bearing registration no.DL-1PB-3966 (bus) in the area opposite of Maurya Sheraton Hotel at Sardar Patel Marg, Chanakya Puri, New Delhi. At least three persons, all of them travelling in the van, suffered injuries, they including (Raj Kumar Sharma), Uma Shankar and Virender, the former Raj Kumar Sharma dying in the consequence. Three accident claim cases were filed, they including one (suit no.55/2010) on account of death of Raj Kumar Sharma and, the others (suit nos.53 and 58/2010), for injuries suffered by Uma Shankar and Virender. The said three cases under Section 166 of the Motor Vehicles Act, 1988 were clubbed for inquiry and decided by common judgment dated 07.02.2011. In each of the said cases, besides Pradeep Kumar, the driver of the van, its registered owner, V.K. Sharma (the appellant in these matters) were impleaded as respondents in addition to New India Assurance Co. Ltd. (insurer) which had issued an insurance policy against third party risk.
2. Pertinent to add here that the insurer during inquiry took the plea that there was breach of the terms and conditions of the insurance policy particularly on the ground that the vehicle was a private car but was being used for commercial purposes, it carrying persons who had taken the van for hire. This plea was accepted by the tribunal and

while the insurer was directed to pay the compensation determined by judgment in favour of the respective claimants in the three cases, it was granted recovery rights against the appellant. These appeals challenge the grant of recovery rights in the aforesaid three cases.

3. Having heard the learned counsel for the appellant and having gone through the record of the inquiry of the three claim cases which was decided by a common judgment, this court holds that the findings returned by the tribunal are based on sound reasons and borne out by the evidence which was led.

4. It is pertinent to note that in their claim petition Rajwati and others members of the family dependent on the deceased Raj Kumar Sharma, (respondents in MACA 384/2011) had specifically pleaded that the van had been taken “on hire”. This is a fact which was substantiated by her appearing in evidence (as PW1) on the basis of her own affidavit (Ex. PW1/1). During the cross-examination, it was admitted by her that the vehicle had been taken on hire by Virender, one of the other claimants (injured), for which reason she was not aware as to what were the hire charges settled. She clarified that the van was owned by some known person.

5. Virender, one of the persons injured in the same accident also appeared as a witness (PW-3), his examination-in-chief having been recorded on 03.12.2007 on the strength of his affidavit (Ex. PW3/A), the said witness having been cross-examined by the counsel for the insurer on that very date and by counsel representing the driver on the next date i.e. 11.08.2008. It is relevant to mention here that at that stage the appellant had chosen to suffer the proceedings *ex parte* as he

would not appear inspite of having due notice of the pending inquiry. During cross-examination, the said Virender (PW-3) appearing in the course of inquiry into the claim case on account of death of Raj Kumar Sharma under cross-examination on 03.12.2007, on being pointedly asked, stated that he had no document to show that the van had been hired by him (though explaining that the document in such regard was available with him in the pocket of the dress he was wearing at the time of the accident, which had been misplaced) reiterating that the van had been taken on hire from Brij Vihar. Under continued cross-examination on 11.08.2008, he stuck to the position that the van had been taken on hire by him.

6. It is interesting to note that Virender, the said very person, who had appeared as a witness at the instance of Rajwati on account of death of her husband, Raj Kumar Sharma in his own case appeared as witness (RW-3) and was cross-examined for such purpose on 16.12.2009. At the said stage, he changed his version by testifying that the vehicle had been “borrowed” from one Mr. Rakesh Sahni who, in turn, had also “borrowed” it from the appellant herein. He would deny at that stage that the vehicle had been taken on hire basis. There was no effort made by the appellant to confront the said witness with his earlier statement made at the instance of Rajwati.

7. Pertinent to add here that the appellant herein being the owner of the vehicle made no effort to lead any evidence to explain the circumstances in which the vehicle was sent out for the fateful journey, driven by the aforementioned person and carrying the victims as its passengers. Though it has been vaguely claimed that the vehicle

had been handed over on account of friendly terms to the victims for the particular journey, there is nothing brought on record to substantiate such to be the position. In these circumstances, the evidence of Rajwati supported by the evidence of Virender (PW-3) given on 03.12.2007 and 11.08.2008 has remained undisturbed.

8. For the foregoing facts and circumstances, the conclusions reached by the tribunal in the impugned judgment do not call for any interference. The appeals are devoid of substance and are dismissed.

9. The statutory amounts deposited by the appellant in these appeals shall be made over to the insurance company towards part satisfaction of the recovery rights.

OCTOBER 13, 2017

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R.K.GAUBA, J.

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