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

*Decided on: 10<sup>th</sup> July, 2017*

+ **MAC APPEAL 389/2014**

**SH. PRAKASH CHAND & ANR.** ..... Appellants  
Through: Mr. Rahul Singh, Mr. Akshay  
Bhandari, Mr. Varun Lal & Mr.  
Mikhil Sharma, Advs.

versus

**THE COMMISISONER OF POLICE  
THROUGH DCP/PCR RAJPURA ROAD  
NEW DELHI & ORS** ..... Respondents  
Through: Mr. Naushad Ahmed Khan,  
ASC for GNCTD for R-1 & 2.  
Ms. Meera Bhatia, Adv. for  
UOI.

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

**JUDGMENT (ORAL)**

1. The accident claim case (MACP 233/08/2011) instituted before the motor accident claims tribunal on 27.02.2008 from which the present appeal arises unfortunately is a case involving two governments, one of the State of Himachal Pradesh and the other Government of NCT of Delhi, and since the latter is a Union Territory also involving Union of India. Two vehicles, one being a van bearing registration no. DL 1CH 7981 was deployed for police control room (PCR) purposes (hereinafter referred to as the PCR van) and the other

being a Gypsy of the former, it bearing registration no. HP 07B 0610 (hereinafter referred to as the Gypsy), were involved in a collision on 25.03.2006 at a place described as a junction of two roads, they being Delhi Gurgaon Road (referred to in the evidence as GGR) and the other Rao Tula Marg (referred to in the evidence as RTR). Statedly, the Gypsy was driven by Prakash Chand, an employee of the Govt. of Himachal Pradesh, he being the first appellant. Similarly, the PCR was driven by Head Constable Sunil Kumar. In the inquiry, Head Constable Sunil Kumar appeared as PW-1 for and on behalf of the claimants, while Prakash Chand, appeared in defence as R1W1, examined on affidavit R1W1/A, it being the evidence led as chief-examination of the latter. The claimants also relied on evidence of three other witnesses they being Head Constable Sunil Kumar (PW-1) Inspector Somender Pal Tyagi (PW-3), and Naresh Bansal (PW-4) manager of the workshop where the vehicle in question was repaired, to prove the expenditure in repairs. Respondents also relied on the record of investigation of the first information report (FIR) No. 176/2007 of police station Delhi Cantt (Ex.PW-1/R2).

2. The case of the claimants before the Tribunal was that the PCR van was stationary at the junction of the roads waiting at the signal while the Gypsy of the State of Himachal Pradesh driven by Prakash Chand, had come in rash manner hitting against the former (PCR van) causing damage to it. By the claim petition, recovery of damages in the sum of Rs. 1,09,988/- was claimed, it being the cost incurred for repairs that had to be carried out. The claim case was contested, *inter*

*alia*, on the plea that the Gypsy was stationary and it was the PCR van which had come in a rash manner causing damage to it. Reference was also made to a compromise that was purportedly arrived at by senior officers of both governments who had rushed to the scene.

3. The Tribunal accepted the evidence and version of the claimant and by the impugned judgment, returned findings accordingly and awarded the claim with interest.

4. In the appeal, challenge is brought to the correctness of the findings that have been returned.

5. Having heard the learned counsel on both sides and having gone through the record, this Court finds that the appeal must be allowed and the impugned award set aside.

6. The collision took place on 25.03.2006. The FIR was registered almost 15 months thereafter on 04.06.2007. In the FIR, it is indicated that there was no delay in registration of the FIR, it statedly involving offence punishable under Section 279 of the Indian Penal Code, 1860. It is strange that being a victim of a cognizable offence, Delhi police itself would take almost fifteen months to register an FIR and then have the temerity to observe in its records that there was no delay. There is no explanation in any manner at any stage in any record as to what took such time for the FIR to be registered. Strangely, Inspector Somender Pal Tyagi, through his affidavit (Ex.PW-3/A), also wanted the court to believe that the FIR had been registered “immediately”. If registration of a crime after fifteen months of occurrence can be

treated as an action taken “immediately”, one wonders what would be actually a case of delay.

7. As noted above, the version of both the drivers contradicts each other. Each driver claimed that was his vehicle which was stationary and the other driver had come jumping the red light. This had to be demonstrated by some evidence indicating the layout of the roads in question and the exact place where the two vehicles had been found after the collision by the police officials who had rushed to the spot upon intimation being conveyed, which was concededly recorded as DD NO. 25 with police post Dhaula Kuan on the same date. No evidence to this effect was either preserved, or developed, or brought before the tribunal during the inquiry.

8. As mentioned above, the respondents referred to a compromise. Document in this regard have been brought on record as Ex.PW-1/R1 which purports to be the statement of Prakash Chand. This statement does not bear any date but it may be assumed to be a statement recorded on the date of occurrence. There is one more statement filed alongside (Pages 171-173 of the tribunal’s record), it purportedly being copy of statement of Prakash Chand given on 26.10.2006. If one goes by the first referred statement (Ex.PW1/R1), it indicates Prakash Chand was questioned by a Head Constable as to whether he wanted any criminal action. This is what is the purport of his statement. He indicated that both vehicles had suffered damage and that no one had suffered any injuries and since no one was responsible no action was solicited. Interestingly, no corresponding version of

Head Constable Sunil Kumar was recorded or at least brought before the tribunal. From this, it appears that the first version of Sunil Kumar would be a statement given on 4.6.2007 when the FIR was registered, fifteen months after the occurrence. It is questionable if such belated version can at all be acted upon.

9. In the foregoing fact-situation, there is no reason why the version of Head constable Sunil Kumar should be preferred over that of Prakash Chand. Consequently, the claim case did not deserve to be accepted.

10. Thus, the appeal is allowed. The impugned judgment is set aside and the claim petition stands dismissed.

11. The appellant would have deposited the awarded amount with the Registrar General of this Court in terms of interim order dated 30.08.2016.

12. The said amount shall now be refunded with statutory deposit, if made.

**R.K.GAUBA, J.**

**JULY 10, 2017**

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