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

Decided on: 26th October, 2017

+ **MAC APPEAL 431/2010**

DEEPAK R GAYAKWARD & ANR. Appellants

Through: **Mr. O.P. Mannie, Advocate**

versus

PARAMESHWAR & ORS. Respondents

Through: **Mr. Sudarshan Rajan, Mr. Vijay Kumar Sharma, Mr. Arjun Gadhoke and Mr. Archit Arora, Advocates**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 27.10.2005, Vijaya, aged about 50 years, earning her livelihood as a maid-servant in the locality described as Nirman Apartments, is stated to have suffered injuries in a motor vehicular accident that took place around 05.40 hours. It is stated that at that time, she was accompanied by her husband Parmeshwar (first respondent herein), both moving on a bicycle. Vijaya died due to the injuries suffered.

2. As per the record, the first intimation about the accident was received in police station Mayur Vihar (vide DD No.6A dated 27.10.2005) at 07.30 hours from Jeevan Anmol Hospital where the victim had been taken. According to the said input, the accident had

been caused by a Maruti Van, particulars whereof were unknown. The police registered first information report (FIR) 385/2005 initially for investigation into offences punishable under Sections 279 and 338 of the Indian Penal Code, 1860 (IPC) on the basis of the statement made by the first respondent (husband) who had added only one more fact to the description of the offending vehicle, it being that it was of colour 'white'. He was clear in his version that he was unable to give the registration number of the vehicle stating that the vehicle had fled away. Since Vijaya had died in the course of treatment, the police added Section 304A IPC for investigation.

3. The record of the corresponding criminal case which had come to be registered on the basis of a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) has been called for. It reveals that the charge sheet submitted in the court of the Metropolitan Magistrate on 16.10.2006 would state that on 30.10.2005, an eye witness had come forward, he being Jagdish Prasad who was examined (as PW-2) by the claimants at the inquiry before the tribunal, he deposing on the strength of his affidavit (Ex. P2). It is the said witness who is stated to have revealed, to the investigating police, the involvement of the maruti van bearing registration nno.DL-2CN-8628 (van, hereinafter), a vehicle admittedly registered in the name of the second appellant. According to the version of the said eye witness (PW-2), the van was driven at the relevant point of time by the first appellant, he being the husband of the registered owner of the said vehicle. As per the version of PW-2, the first appellant was negligent

in driving which was the cause of the accident that proved fatal for Vijaya.

4. The accident claim case (suit no.377/08) was instituted on 31.01.2007 by Parmeshwar (husband of the deceased) joining his two daughters (collectively, the claimants), they being first to third respondents in the appeal. In the claim case, the appellants herein were impleaded as the first and second respondents in addition to United India Insurance Company Ltd. on the averments that it (the insurance company) had issued an insurance cover which was valid and effective for the date of cause of action.

5. The proceedings recorded by the tribunal would show that, by order dated 28.02.2008, the name of the insurance company was deleted from the array upon it being found that the vehicle did not have any such insurance cover. It appears that while deciding the claim case by judgment dated 11.03.2010, accepting the claim that the accident had occurred involving the above mentioned van on account of its negligent driving by the first appellant and consequently holding the two appellants jointly and severally liable, the tribunal erroneously observed (in para 25) that it was the insurance company which was to deposit the awarded amount.

6. Be that as it may, the parties have understood the import and effect of the judgment to the effect that the liability essentially has been placed at the door of the appellants who have come up by the present appeal to question the correctness of the findings about the involvement of the van in the accident wherein Vijaya suffered the fatal injuries as also on the issue of negligence in its driving by the

first appellant, the contention raised being that the first appellant is a handicapped person, described as “lame” in the pleadings, one who was not only incompetent but also unable to drive a motor vehicle.

7. Against the above backdrop, this court by order dated 18.09.2017, recorded as under :-

“The appeal is by the parties that were impleaded as the respondents in the claim case before the tribunal leading to the impugned judgment being passed, they having been described as the driver and the registered owner respectively of the offending vehicle on whom the liability to pay the compensation thereby determined was fastened, there being no insurance policy, the insurance company shown in the fray having been let off.

The appellants had denied any involvement of the van bearing registration no.DL-2CN-8628 in the accident that had statedly occurred on 27.10.2005 resulting in the death of Vijaya which was the cause of action pleaded for the claim petition by the first to third respondents (collectively, the claimants). It was also pleaded that while the second appellant (registered owner of the vehicle) was employed as Head Constable in Delhi Police and it is she who would drive the said vehicle, the first appellant was described as a “lame person” unable to drive.

It appears that while the claimants attributed improper influence exercised by the second appellant in delaying the progress of investigation into the corresponding FIR (bearing no.385/2005 of police station Mayur Vihar under Sections 279, 338 IPC), the appellants also expressed grievance about investigation being unfair referring in this context to certain representations made to the superior police officers. In the said material, there is oblique reference to the second appellant having been made

to sign on certain blank papers, reference also having come to notice under Section 133 of the Motor Vehicles Act, 1988. But, the copy of the said notice and reply thereto have not been submitted.

On being asked, the counsel representing the appellants submitted that the police had eventually submitted a charge-sheet seeking prosecution of the first appellant on the basis of evidence gathered through the above mentioned FIR. He also submitted that the criminal case arising out of the said charge-sheet is pending trial till date in the court of the Metropolitan Magistrate at Karkardooma Courts, the last date of hearing whereof was 15.09.2017, since adjourned to 30.11.2017.

It will be necessary to peruse the record of the said criminal case, file whereof shall be requisitioned and placed before the court for further hearing.

The appellants are directed to disclose on oath facts concerning the claim that the first appellant is "lame" supported by documents. They shall remain present in person in Court on next date.

The matter shall be listed on 17.10.2017 under the category of 'from regulars'. It shall, however, retain its position in the list of 'regulars'.

8. Pursuant to the directions in the above quoted order dated 18.09.2017, the first appellant has submitted his affidavit sworn on 11.10.2017. The disclosures made in the said affidavit, and the documents filed therewith, reveal that he is indeed a person who has been certified and evaluated to be a handicapped person, his physical impairment being permanent to the extent of 52% in relation to the right lower limb, this on account of congenital shortening of the right thigh and bones of that part of the body. This fact is noted only for

completion of narration alongside the submissions to the contrary of the claimants that the first appellant had actually obtained a licence to drive from the transport authority, such license authorizing him to drive amongst others a motorcycle and a light motor vehicle (commercial).

9. While it has been the contention of the claimants that the second appellant being a member of Delhi Police had exerted undue influence over the investigating police officer in the corresponding criminal case to not only cause undue and inordinate delay but also to effect the result of the investigation, it is the version of the appellants that the investigation has been motivated in which regard the second appellant was constrained to make certain representations before the superior authorities in the hierarchy of the department where she has been serving. Reference also has been made to motive on the part of the eye witness, on basis of history of certain earlier incidents including one wherein proceedings had been initiated by the executive magistracy in terms of Sections 107 and 151 Cr. PC.

10. Be that as it may, it needs to be noted that in the charge-sheet submitted on completion of investigation into the corresponding FIR in the court of the Metropolitan Magistrate, the investigating police officer had, *inter alia*, referred to a notice under Section 133 of the Motor Vehicles Act, 1988 which had been issued by him and served on the second appellant (registered owner of the van) seeking to ascertain from her particulars of the identity of the person who was driving the van on the relevant date and time. As per the allegations in the charge sheet, notice had been duly served on the second appellant

on 03.11.2005 but she had denied the involvement of the vehicle in the accident. The record of the criminal case does contain a copy of the notice under Section 133 of the Motor Vehicles Act, 1988 bearing the acknowledgment of receipt by the second appellant (page 133) but the reply submitted by her, in response, is conspicuously missing. During the course of hearing on the appeal at hand, upon being asked, the learned counsel for the appellants submitted a photocopy of such reply as had been submitted by the second appellant to the investigating officer, it bearing the date 03.11.2005, the same very date on which notice had been served. Copy of the said document has been taken on the record of this appeal for ready reference.

11. Pertinent to note here that the second appellant appears to have already been called by the criminal court for purposes of her evidence, she having appeared on 01.11.2012 and having been examined as witness for the prosecution (PW-3). Noticeably, she was not asked any question about the notice under Section 133 of the Motor Vehicles Act, 1988 or her response thereto.

12. The learned counsel for the appellants pointed out that in the main petition seeking compensation, the claimants had mentioned the particulars of the van which had caused the accident as one bearing registration no.DL-2CN-8268 (page 20). *Per contra*, the counsel for the claimants submitted that it was a typographical error as the description had been given correctly vide “Annexure A” which was part of the claim petition. The eye-witness Jagdish Prasad (PW-2) examined on the strength of his affidavit (Ex.P2) noticeably in para 1 of his said affidavit, would describe the offending vehicle as one

bearing registration no.DL-2CN-8628 but during cross-examination, he showed some hesitation and then would add that the vehicle which had caused the accident bore the registration no.DL-2C-L-8628 which would be a description different from the one with which the appellants have a connection.

13. In the above facts and circumstances, the learned counsel on both sides fairly agree that the matter needs deeper probe. For such purposes, possibly the investigating police officer may also have to be called in evidence to ascertain further facts. The learned counsel for the claimants thus conceded that the impugned judgment may be set aside and the matter may be remitted to the tribunal for further inquiry. It is ordered accordingly.

14. Thus, while setting aside the impugned judgment, the claim case of the respondents is remitted to the tribunal for further inquiry. For such purposes, the parties are directed to appear before the tribunal on 24.11.2017. During such further inquiry, the claimants, as indeed the parties that contest, will be given an opportunity to lead further evidence. The tribunal will have to remember that it is primarily its obligation to reach the truth and for such purposes, if need be, it should exercise its inherent powers to call for such further material, or documents, or evidence as may be necessary or deemed proper. The accident had occurred twelve years ago and, therefore, expedition in fresh adjudication would be expected. It is hoped that the parties, and their counsel, would cooperate with the tribunal in this direction.

15. By order dated 19.07.2010, the appellants had been directed to deposit 50% of the principal amount with the tribunal, which was permitted to be released to the claimants, this as a pre-condition to the stay against execution. The amount was released upon personal bonds being furnished with undertaking given by the claimants to restitute the same, if so required. The claimants shall remain bound by the said undertakings. Necessary directions in such regard would be given by the tribunal at the time of fresh adjudication.

16. Needless to add, nothing stated here, or in the impugned judgment, shall bind the tribunal at the time of fresh adjudication.

17. The appeal is disposed of in above terms.

OCTOBER 26, 2017

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R.K.GAUBA, J.



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