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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th November, 2017

+ **MAC.APP. 642/2012**

ANJU DHIMAN

..... Appellant

Through: Mr. Ayush Gupta with Mr. Daman
Popli, Advocates.

versus

D N GROVER & ORS

..... Respondents

Through: Mr. Puran Chandra, Advocate for
R-1.

+ **MAC.APP. 280/2016**

D N GROVER

..... Appellant

Through: Mr. Puran Chandra, Advocate.

versus

ANJU DHIMAN & ORS

..... Respondents

Through: Mr. Ayush Gupta with Mr. Daman
Popli, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mr. D.N. Grover (appellant in MAC.Appeal No. 280/2016) (claimant) suffered injuries in a motor vehicular accident that occurred on 19.01.2009 and instituted an accident claim case (MACT Suit No.

804/2009) on 16.03.2009 seeking compensation. In the said claim case, he alleged that the accident had been caused due to negligent driving of motor cycle bearing registration No. DL-8SW-3571 (the motorcycle) driven by Satish Kumar Arya (the respondent in these appeals). He impleaded the said Satish Kumar Arya as the prime respondent to the claim case, he being, as per the claimant, the principal tort-feasor.

2. The motorcycle on the relevant date was registered in the name of one Suresh Kumar (the registered owner) who was also shown in the array of parties as a respondent before the Tribunal. On 12.08.2009, however, ASI Mahavir Singh, the Investigating Officer of the corresponding criminal case registered with Police Station Palam Village appeared before the Tribunal. At that time, Rajiv Dhiman, husband of Anju Dhiman (appellant in MAC. Appeal No. 642/2012) was also brought before the Tribunal and from the submissions made by the said Suresh Kumar and Rajiv Dhiman, it was revealed that the motorcycle had already been sold by said Suresh Kumar, for consideration, in favour of Anju Dhiman. On the basis of such facts brought to light, the Tribunal by order dated 12.08.2009 gave liberty to the claimant to implead Anju Dhiman as a party to the case, the name of Suresh Kumar having been struck off from the array. The claimant by amendment of the petition subsequently impleaded Anju Dhiman (appellant in MAC. Appeal No. 642/2012) as a respondent.

3. Though the insurance company (The New India Assurance Co. Ltd.) was also reflected as a respondent in the memo of parties before the Tribunal, it is clear from the record and the submissions made that

the motorcycle was not covered by any valid insurance for third party risk for the period in question.

4. Anju Dhiman (appellant in MAC. Appeal No. 642/2012) admittedly did not contest the claim case before the Tribunal and opted to suffer the proceedings *ex parte*, allegations being made in this context about negligence on the part of the counsel then engaged.

5. The Tribunal decided the claim case, by judgment dated 10.02.2011, holding Satish Kumar Arya (the driver) and Anju Dhiman jointly and severally liable to pay compensation which was determined in the sum of Rs.7,94,000/-, with interest levied at 9% per annum, the said amount inclusive of loss of earning power in the sum of Rs.6,24,000/- which in turn, was on the basis of finding that the claimant has suffered permanent disability to the extent of 43%, the functional disability assessed by the Tribunal to be 20%.

6. Anju Dhiman, who was held vicariously liable to pay the compensation primarily on the basis of the admission that she had purchased the vehicle from its registered owner prior to the accident, later moved the Tribunal by application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) in which she, *inter alia*, took up the plea that prior to the accident she had also sold the vehicle further to Satish Kumar Arya (the driver) and had obtained the delivery receipt from him. The Tribunal, however, by order dated 09.04.2012, dismissed the said application under Order IX Rule 13 CPC observing, *inter alia*, that while admitting the purchase of the motorcycle from the registered owner her husband had not mentioned before the

Tribunal on 12.08.2009, any such facts relating to further sale of the motorcycle to the driver Satish Kumar Arya.

7. Anju Dhiman has challenged the judgment dated 10.02.2011 and the order dated 09.04.2012, primarily contending that since she had sold the vehicle prior to the date of accident and had no control over it, she not being the registered owner any more, no responsibility on the principle of vicarious liability could be fastened against her.

8. On the other hand, the claimant has also come up in appeal (MAC. Appeal No. 280/2016) submitting that the functional disability has not been properly assessed as the injuries included fracture of the hip bone which required to be replaced and the further medical or surgical procedures that have been undergone have resulted in additional expenditure which would also require to be compensated, there being no provision made in the award for further medical treatment.

9. Having regard to the contentions raised on behalf of the claimant, this Court finds that there is a need for further inquiry for appropriate evaluation of the nature of disability suffered by the claimant and its extent. It is noted that the Tribunal on the application of the claimant had directed the medical Superintendent of Deen Dayal Upadhyay Hospital to have the claimant examined and appropriate disability certificate issued. The certificate which came to be issued in the wake of such directions on 04.02.2010 is available in the Tribunal's record (page 345). It appears to be a non-speaking opinion. The nature of impairment on which account the disability has been suffered has not been explained. No clear conclusions on the

issue of functional disability can be reached on its basis unless and until at least one member of the board is called upon to explain and elaborate. The Tribunal should have insisted on the appearance of at least one such member of the board for eliciting the relevant facts on the basis of which the functional disability could be determined. The claimant also did not examine any expert on the issue. There is no clarity as to the requirement or advice for further surgical procedures. The continuing medical treatment post the decision of the claim case by the Tribunal would require to be substantiated not only by requisite documents concerning such medical advice but also formal proof of the expenditure actually incurred in such wake.

10. Against the above backdrop, the claim case deserves to be remanded to the Tribunal for further inquiry for appropriate determination of the just compensation. In determining just compensation, the Tribunal will bear in mind to include appropriate amount under the head of future medical expenditure.

11. The argument raised by Anju Dhjiman that she was not the registered owner of the motorcycle on the relevant date can be of no assistance to her in view of the ruling of this Court in *MAC. Appeal No. 524/2008, Sidharth Khetrapal v. Mohd. Hanif & Ors.*, decided on 14.09.2017 wherein this Court had observed as under:

“The registration of the vehicle in the name of an individual is of import. It generally proceeds on the presumption that the person in whose name the vehicle is registered is the person responsible for its use. This attracts to him the vicarious liability. But then, it being a rebuttable presumption, it cannot be a thumb rule that in all cases the registered owner must be held

accountable. If the registered owner can show, by credible evidence, like in the present case, that he had no control over the vehicle or that the vehicle was with someone else, over whom, or use of the vehicle by whom, he had no control, he cannot be held accountable, the liability in such case shifting on to the person who had the control over the vehicle.”

12. Since the claim case is being remanded to the Tribunal, however, the issue raised by Anju Dhiman about she having sold the vehicle in favour of Satish Kumar Arya (the driver) and consequently having lost control over it, prior to the date of accident, would also deserve to be made over for appropriate inquiry and determination by the Tribunal. Should she succeed in establishing such sale of the motorcycle on a date anterior to the accident, she will have to be relieved of the liability to pay compensation in the present case. Conversely, if she fails to discharge the onus of proof in this regard, she would continue to be liable on the principle of vicarious liability, jointly and severally with Satish Kumar Arya.

13. In the foregoing facts and circumstances, the impugned judgment to the extent thereby compensation was determined and to the extent thereby liability was fastened against Anju Dhiman, is set aside. The matter limited to these two issues is remanded to the Tribunal for further inquiry and fresh determination. The parties are directed to appear before the Tribunal on 22nd December, 2017.

14. By order dated 31.05.2012, in MAC. Appeal No. 642/2012, Anju Dhiman (the appellant) was directed to deposit the awarded amount with up to date interest with the Registrar General who was

directed to keep it in a fixed deposit with UCO Bank, Delhi High Court Branch, initially for a period of six months with provision for renewal during pendency of the appeal. On 16.07.2012, it was, however, clarified that the execution of the award against Anju Dhiman would remain stayed, in view of the amount of Rs.2.5 lakhs having already been deposited by her. The said amount of Rs.2.5 lakhs was released to the claimants by order dated 18.03.2013. The counsel representing Anju Dhiman submitted at the hearing that she had also deposited Rs.1 lakh with the Tribunal on 21.01.2012 which was also released to the claimant by the Tribunal by its order dated 04.05.2012. The amounts already received by the claimant from Anju Dhiman would be liable to be adjusted against the fresh determination of compensation if she is again held liable at the time of fresh adjudication. Conversely, if Anju Dhiman establishes before the Tribunal in the further inquiry that she had already sold the vehicle to Satish Kumar Arya prior to the date of accident, the Tribunal will grant recovery rights in her favour against Satish Kumar Arya.

15. Both the appeals stand disposed of in the above terms.

R.K.GAUBA, J.

NOVEMBER 20, 2017

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