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

Decided on: 25th July, 2017

+ **MAC.APP. 367/2009 and CM Nos.10524-10525/2009**

NEERAJ

..... Appellant

Through: Appellant in person

versus

GODHAN SINGH & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
R-1 & 2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Master Pankaj, aged about 10 years, son of the first and second respondents (collectively, the claimants) statedly died due to injuries suffered in a motor vehicular accident that had occurred on 14.05.2006 at about 7.45 p.m. near B-10A Apartments in the area of Sector 34, Noida,U.P. due to negligent driving of a tractor bearing Registration no.HR-O-9314. The accident claim case (suit no.359/08) instituted by the claimants on 13.12.2006 concluded with the judgment dated 23.01.2009 of the Motor Accident Claims Tribunal (Tribunal) holding the appellant, and one another (Rai Singh), as jointly and severely liable to pay the compensation which was assessed in the sum of Rs.2,85,000/-. The finding returned by the Tribunal in the said judgment was that the appellant was the driver of the tractor at the

relevant point of time, he being negligent and consequently having caused the accident.

2. By the appeal at hand, challenge was brought to the afore-said finding on the basis of plea that the appellant was neither the driver nor the owner of the tractor.

3. The submissions of the appellant and of the claimants through counsel have been heard and the tribunal's record has been perused.

4. The claim petition was submitted on 13.12.2006 with the pleadings that the appellant, impleaded as the sole respondent at that stage, was the owner of the tractor, this being reflected in para 15. The sequence of events leading to the accident was set out in para 20. There is no averment of any nature in the entire petition, including in said para 20, imputing any act of commission or omission or connection of the appellant with the claim case except the pleadings in para 15 indicating he to be accountable on account of he being the owner of the tractor.

5. The appellant in response to the notice had appeared before the Tribunal and submitted written statement dated 02.02.2007 denying any connection whatsoever clearly stating that he was neither the driver nor the owner of the offending vehicle. Though it does appear that in the said pleadings, he also contended that the tractor was registered in the name of Rai Singh (third respondent in appeal) with the further pleading that it had been purchased, for consideration, by one Dharam Singh @ Birham son of Lekhi Chand, with additional

averments to the effect that the accident may have occurred due to negligence on the part of the deceased himself, from such pleadings it cannot be deduced that the appellant had some connection with the tractor so as to be held accountable either on the tortfeasor or on account of vicarious liability.

6. The record of the tribunal shows that possibly on the basis of pleadings to above effect in the written statement of the appellant, the claimants moved an application whereupon the said Rai Singh and Dharam Singh came to be impleaded as additional respondents. The said Rai Singh, on notice, also appeared to resist the claim petition submitting his written statement dated 28.04.2007 claiming that he had already sold the vehicle on 08.07.1991 on the basis of a no objection certificate issued by Regional Transport Authority Jhajjar which had been taken note of by Regional Transport Authority, Gurgaon and, therefore, he was not liable. In the pleadings of the said other respondent, there was no reference made to the role of the appellant vis-à-vis the tractor. Dharam Singh @ Birham, the other person additionally impleaded, however, did not appear and was set *ex-parte*.

7. During the inquiry, before the tribunal, the claimants led evidence by examining the first claimant (first respondent) appearing as PW-1 and one Gopal Singh appearing as PW-2. It may be mentioned here that the said PW-2 Gopal Singh is the brother of the first claimant / respondent, he being the uncle of the deceased child. PW-1 only deposed about the facts in support of the claim for

compensation, he not being present at the scene of the accident. PW-2 appeared as an eye witness and did name the appellant as the driver. But, during cross-examination, he admitted that he had not seen the driver at the spot.

8. Reference was made to the police investigation, record pertaining whereeto was also submitted (Ex. R2W2/A and Ex. P3). The latter document revealed that the FIR had been registered on the basis of statement of PW-2 clearly showing that the driver of the tractor had fled away from the scene, there being no reference whatsoever to the name of the appellant in such proceedings.

9. The appellant examined one Sandeep Sharma (R1W1), Jasbir Singh (R1W2) and himself (R1W3). In the said testimony, on the basis of his own affidavit (Ex. R1W3/A), the appellant reiterated that he was neither the owner nor the driver of the offending vehicle. He was cross-examined at length by the counsel for the claimants. It does appear that in the corresponding criminal case, he is being prosecuted as the driver. From this fact itself, however, it cannot be deduced that the allegations against him about being driver of the tractor must be accepted as the truth.

10. The fact remains that the claimants have not led any evidence to confirm that the appellant was the driver of the tractor at the relevant point of time, it being admitted that he was not the registered owner of the tractor nor there being any proof that he had any control over the tractor during the relevant period. The finding returned by the tribunal

holding him liable on the ground of he being the driver, therefore cannot be sustained.

11. In the result, the appeal is allowed. The impugned judgment to the extent it held the appellant liable to pay compensation is set aside.

12. The statutory amount, if deposited, shall be refunded.

13. The captioned appeal and the pending applications are accordingly disposed of.

JULY 25, 2017

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R.K.GAUBA, J.



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