

\$~6 & 7 (*common order*)

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

Decided on: 13th September, 2017

+ MAC.APP. 241/2009 and CM APPL.7132/2009

SUKHBIR SINGH Appellant

Through: Mr. O.P. Mannie, Advocate

versus

MOHD. KHAN & ORS. Respondents

Through: Mr. Shahid Ali, Advocate with
Mr. Satish Kumar, Advocate for
R-2.

+ MAC.APP. 390/2009

PURAN CHAND JAIN THROUGH: LRS Appellants

Through: Mr. Shahid Ali, Advocate with
Mr. Satish Kumar, Advocate

versus

SUKHBIR SINGH AND OTHERS Respondents

Through: Mr. O.P. Mannie, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sukhbir Singh, appellant (in MAC APP.241/2009) had instituted accident claim case (Petition No.121/2009), on 04.02.1986 seeking compensation for injuries suffered by him in a motor vehicular accident that occurred on 06.08.1985, statedly involving

negligent driving of truck bearing registration No.DHG-5504 (the truck) by Mohd. Khan, a respondent in these appeals, he being impleaded as first respondent in the said claim petition, the truck being registered in the name of Puran Chand Jain with the registering authority, he having been shown in the fray as second respondent. The said driver and the registered owner of the truck, the latter (since deceased) now represented by his legal representatives, who are appellants (in MAC APP.390/2009) suffered the proceedings *ex parte*, it resulting in award being granted by judgment dated 30.07.2002.

2. On the application of the appellants (in MAC APP.390/2009), who represent the estate of registered owner of the vehicle, under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC), the Tribunal, by its order dated 05.07.2008, set aside the said *ex parte* judgment and revived the inquiry into the claim petition so as to give opportunity to them to contest by cross-examining the claimant witness and also adduce evidence in rebuttal. The revived inquiry resulted in judgment dated 25.04.2009 being passed. It may be added here that in view of the contentions urged by the parties representing the estate of the deceased registered owner of the vehicle, Khurshid Khan son of Chhotey Khan was added to the fray as fourth respondent, there being no third respondent as the description in such context “insurance company – (NIL)” is vague.

3. The prime defence taken by the legal representatives of the deceased registered owner (Puran Chand Jain) was that the truck had been sold to said Khurshid Khan, for consideration, on 07.07.1984

against a formal acknowledgement of the said purchase and handing over of the vehicle with assurance by the said purchaser to have the vehicle transferred in his name in the records of the registering authority in due course. The evidence (Ex.DW-1/1) to this effect was led during inquiry, the document statedly showing sale of the truck to Khurshid Khan.

4. The Tribunal, however, was not satisfied with the aforesaid proof and rejected the said evidence and the contention based thereon observing, *inter alia*, that witness Seema Jain (R2W1) was in no position to vouchsafe the execution of such document. By the impugned judgment, the Tribunal awarded compensation in the total sum of Rs.32,376/- holding the said Mohd. Khan and the legal representatives of the deceased registered owner of the vehicle jointly and severally liable, they being called upon to pay the said amount to the claimant with interest @ six per cent (6%) per annum.

5. Both the claimant Sukhbir Singh and the legal representatives of the deceased registered owner Puran Chand Jain, feeling aggrieved have come up with their respective appeals to this court, the claimant seeking enhancement of the compensation on the ground the damages under various heads are highly inadequate and the latter reiterating that after the sale of the truck they could not be held liable as the responsibility should have been fastened on Khurshid Khan who, in spite of notice, had failed to appear or contest.

6. During the pendency of these appeals, by order dated 11.01.2010, common to both the matters, directions were given to the

Station House Officer (SHO) of Police Station Mehrauli where the corresponding FIR No.283/1985 had been registered and investigated into, to give report about the alleged sale of the vehicle by Puran Chand Jain in favour of Khurshid Khan on 07.07.1984. Khurshid Khan was also directed to remain present in person. While Khurshid Khan would not appear, the report dated 05.02.2010 of the SHO PS Mehrauli had come on record of MAC APP.390/2009. Crucially, on the question of registration of the vehicle in question, the SHO PS Mehrauli has reported that the ownership was transferred in the record of the registering authority to the name of Khurshid Khan on 04.09.1985, the vehicle having subsequently been transferred to two other persons (Moman and Somnath) on 28.10.1987 and further that no objection certificate was also issued on 02.08.1990 by the office of Motor Licensing Officer, Headquarter Branch Delhi in favour of Regional Transport Officer, Alwar, Rajasthan.

7. It needs to be borne in mind that Khurshid Khan, in spite of opportunity given by tribunal as also before this court, has failed to appear to assist. Though the report dated 05.02.2010 of the SHO Police Station Mehrauli indicates that the transfer of the vehicle from the name of Puran Chand Jain (deceased registered owner) to that of Khurshid Khan took place only on 04.09.1985, more than one year after the cause of action had arisen for the claim petition of Sukhbir Singh to be filed, there needs to be some further probe as to on basis of what document Khurshid Khan had got the said vehicle mutated in his favour.

8. Unfortunately, the inquiry by the tribunal was not comprehensive. It relied more on the evidence offered by the parties of their own volition. In the given facts and circumstances that, obviously, was not sufficient. If the vehicle had actually been handed over by Puran Chand Jain during his lifetime, in terms of transaction in the nature of sale, for consideration, to Khurshid Khan in July, 1984, Khurshid Khan would have some accountability in such respect. This aspect has not been properly examined or adjudicated upon by the tribunal. It has to be highlighted here that in construing the responsibility of the parties who were in the fray as respondents, the liability sought to be fastened being under the law of torts, the definition of the expression “owner” under the provisions of the Motor Vehicles Act, 1939, which was applicable during the relevant period, would need to be borne in mind.

9. Since the claimant is also aggrieved on the ground the compensation awarded is inadequate, the learned counsel appearing on his behalf fairly conceded that the issues of the determination of just compensation, and the accountability of the parties on the other side, may be remitted to the tribunal for further inquiry, particularly, in view of the above quoted report of the SHO Police Station Mehrauli respecting ownership of the vehicle in question.

10. The appeals are, thus, allowed. The impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry into above aspects and fresh adjudication on all issues that arise.

11. As is now requested, the claimant will be entitled to lead further evidence respecting the additional medical expenditure that he claims to have incurred over the period. Needless to add, the parties that contest will also be entitled to adduce additional evidence, if any.

12. Since Khurshid Khan has not appeared at the final hearing on the appeals, the tribunal, in all fairness, shall issue fresh notice to him to secure his presence. The parties shall appear before the tribunal on 12.10.2017.

13. The statutory amount deposited by appellant (in MAC APP.390/2009) shall be made over to the tribunal, to be retained in fixed deposit interest bearing receipt in a nationalized bank, initially for a period of six months with provision for auto-renewal, its proceeds to be availed in light of the adjudication that is expected to be made.

14. Both the appeals are disposed of with above observations.

SEPTEMBER 13, 2017

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R.K.GAUBA, J.