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

Decided on: 04th August, 2017

+ **MAC.APP.1161/2013**

MR. SURINDER KHANNA Appellant
Through: **Mr. Sunil Goyal, Advocate**

Versus

MR. MADAN LAL & ANR. Respondents
Through: **Mr. Saurabh Kansal, Advocate**
for R-1 along with R-1 in
person.

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

JUDGMENT (ORAL)

1. On the accident claim case (MACT No.1163/2010) instituted by the first respondent (the claimant) on 28.09.2010 seeking compensation for injuries suffered by him in a motor vehicular accident statedly involving negligent driving of Maruti car, bearing registration No.CH-01E-5500 (the car), the Motor Accident Claims Tribunal (the tribunal) held inquiry and, by judgment dated 24.04.2012, awarded compensation in the sum of Rs.1,49,000/- directing the respondents Anil son of Dayanand (second respondent herein) and Surinder Chand son of Sansar Chand, resident of 3252, Sector 23-D, Chandigarh to pay the said amount with interest @ 7.5% per annum holding them jointly and severally liable.

2. It is now undisputed on both sides that the person described as Surinder Chand son of Sansar Chand impleaded as second respondent before the tribunal in the said proceedings is none other than the appellant before this court, his correct description being Surinder Khanna son of Sansar Chand Khanna, resident of House No.3252, Sector 23-D, Chandigarh.

3. The judgment of the tribunal dated 24.04.2012 whereby the liability in the above manner was fastened, *inter alia*, against the appellant would indicate that the appellant had suffered the proceedings *ex parte*. The record of the tribunal, however, reveals that in the wake of Detailed Accident Report (DAR) submitted by police in the context of FIR No.166/2010 of Police Station Narela, of which the accident in question was the subject-matter, the victim, driver or the owner of the offending vehicle not having been produced, the tribunal had issued court notices. In due course, the claimant had come up with his claim petition under Section 166 of the Motor Vehicles Act, 1988, it however, wrongly describing the appellant as Surinder Khan, though his parentage and address were correctly stated. It also needs to be noted that the process issued by the tribunal for 28.09.2010 in respect of said second respondent (actually, the appellant) had returned unserved for the reason the process serving police official was unable to leave Delhi for Chandigarh on account of his then engagement in official duties concerning Commonwealth Games. The record, however, would also show that an advocate describing his name as Ravinder Mann appeared before the tribunal on 28.09.2010 and filed

memo of appearance for and on behalf of the appellant. The tribunal took this as good service and proceeded further. Since no written statement was filed nor there was any participation for and on behalf of the appellant in the subsequent proceeding, the judgment was rendered *ex parte*. In the wake of the execution proceedings taken out through the revenue authorities, however, the appellant became alive to the situation and came up with an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) which was dismissed by the tribunal by order dated 26.10.2013.

4. The present appeal questions the aforesaid order dated 26.10.2013, it also being the contention of the appellant that he had no connection whatsoever with the vehicle in question, he not being its registered owner.

5. During the course of hearing, the learned counsel for the claimant fairly conceded that the appeal may be allowed, though his request is that the only issue as to whether the appellant was the registered owner of the car in question on the relevant date may be put to further inquiry. The learned counsel for the appellant fairly conceded to the said request he also offering to deposit, in order to show his *bona fide*, the awarded amount with up-to-date interest with the tribunal, though his further request also being that such amount may be retained in fixed deposit account and not be released during the pendency of the further inquiry into the above mentioned issue. The counsel for the appellant also submitted that if the tribunal were to return a finding against him on the issue of ownership of the car, he

undertakes to pay the compensation as has been determined by the tribunal by judgment dated 24.04.2012.

6. Having regard to the submissions, the request of both sides being fair and appropriate, the appeal is allowed. The issue as to whether the appellant was the owner of the car on the date of the accident is remitted to the tribunal for inquiry. The appellant shall deposit the amount of compensation awarded by the tribunal, by judgment dated 24.04.2012 with up-to-date interest within thirty days, and upon such deposit being made, the amount shall be retained by the tribunal in an interest bearing fixed deposit account in a nationalized bank, initially for a period of three months with provision for auto-renewal. If upon such inquiry, as is being remitted, the tribunal were to reach the conclusion that the appellant was not the owner of the car on the relevant date, the amount deposited by him with up-to-date interest shall be refunded to him. Conversely, if the finding were against the submissions of the appellant, the amount will be released to the claimant with up-to-date interest in satisfaction of his claim for compensation.

7. Since the issue being remitted for further inquiry is short, it is expected that the tribunal shall hold expeditious proceedings and shall reach an early decision, preferably within six months from the date of first appearance. Given the nature of dispute which would be subject-matter of such inquiry, it will be the burden of the appellant to lead evidence first. Needless to add, the contesting party shall also be entitled to lead evidence in rebuttal, if any.

8. The parties shall appear before the tribunal on 31st August, 2017.
9. The statutory amount shall be refunded to the appellant.
10. The appeal stands disposed of in above terms.
11. *Dasti.*

AUGUST 04, 2017
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R.K.GAUBA, J.

