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

Decided on: 10th August, 2017

+ **MAC.APP. 830/2016 and CM APPL.38230-38231/2016,
38449/2016**

ATUL SINGHAL

..... Appellant

Through: **Mr. Jai A. Dehadrai, Advocate
with Ms. Shivangini Gupta,
Adv.**

versus

JAGDISH SINGH

..... Respondent

Through: **Mr. Amit Kumar Pandey,
Advocate for R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent is stated to have suffered injuries in a motor vehicular accident that occurred on 11.03.2010 on account of negligent driving of two wheeler scooter bearing registration No.DL-7S-B-4408 (the scooter). He instituted accident claim case (Suit No.317/10/2010) on 07.06.2010 in the wake of Accident Information Report (AIR) submitted by the police pursuant to the evidence gathered during investigation into corresponding FIR No.64/2010 of Police Station New Friends Colony, New Delhi. In the said claim petition, the appellant herein was impleaded as second respondent with the description that he was the registered owner of the scooter on the relevant date, per the averments of the claimant, the scooter being driven at the relevant point of time by the third respondent Naim

Akhtar (wrongly described as Nadim Akhtar). The appellant upon notice appeared and, by his pleadings seeking to put in contest, claimed that he had already sold off the scooter for consideration on 23.09.2008 to Kartar Singh son of Pratap Singh, resident of 54-D, DDA flats, Mata Sundri Road, New Delhi. He submitted some documents evidencing such sale. Pursuant to such pleadings, the claimant made amendment to the claim petition impleading the said Kartar Singh son of Pratap Singh as third respondent, he now being the second respondent in the appeal.

2. The Motor Accident Claims Tribunal (the tribunal), by judgment dated 10.04.2015, accepted the claim for compensation on the principle of fault liability holding the third respondent negligent, this being the cause for collision. In para 19, the tribunal also recorded Kartar Singh (the second respondent herein) to be vicariously liable he being the owner. Thereafter, in para 20, the tribunal added that since respondents had suffered the proceedings *ex-parte*, notices be issued to them calling them upon to deposit the awarded amount. It is on the basis of such observations covering all the three respondents in the inquiry that liability was assumed to be fastened against the appellant, proceedings taken out in its wake for recovery giving rise to the cause of action for the present appeal to be preferred before this court.

3. The service on third respondent has not been effected in the appeal. Since he was held to be the principal tortfeasor, he not having challenged the said finding on record or the directions holding him

responsible to pay compensation on such count, given the nature of dispute brought out from the present appeal, his presence and service is dispensed with. As per the record, the second respondent Kartar Singh was duly served on 27.01.2017 for 09.02.2017. He has failed to appear to put in contest to the appeal. He is set *ex parte*.

4. Having heard the learned counsel for the appellant and the counsel representing the first respondent (the claimant), this Court is of the view that the Tribunal should have held a proper inquiry into the question of ownership of the scooter. Though the appellant had pleaded the fact of transfer of the scooter, for consideration, in favour of Kartar Singh on 23.09.2008, also seeking to support it *prima facie* with some documents, copies whereof were placed on record, the fact remains that he did not lead any evidence. Rather he, after submitting his written statement chose to suffer the proceedings *ex parte*. Since he has continued to be shown as a registered owner in the records of the transport authority, it was all the more necessary to have clarity on record. Though the Tribunal seems to have accepted the pleadings of the appellant, on its face value, by observing in paras 19 and 21 that Mohd. Naim was the driver and Kartar Singh was the owner of the offending vehicle, there is no discussion of evidence on the basis of which the appellant can be treated to have been excluded or exonerated.

5. It is in above view of the matter that the directions in para 20 of the impugned judgment referring to all the three respondents being liable to deposit the awarded amount necessitate further probe.

6. In above facts and circumstances, the appropriate course would be to remit the case for a limited inquiry into the question of ownership of the scooter. The burden of proving the sale of the scooter on the above mentioned date by the appellant is on him. In the inquiry that is being remitted, the appellant shall be called upon to adduce appropriate evidence, of course, followed by an opportunity to the contesting parties to lead evidence in rebuttal, if any.

7. If the appellant succeeds in establishing the transfer by sale of the scooter to Kartar Singh on a date anterior to the date of accident, he would have to be exonerated from any responsibility. Conversely, if he fails to prove such facts, he would be liable to pay the compensation as determined by the Tribunal through the impugned award.

8. Given the fact that the inquiry hereby remitted would be on a very limited point, it is desirable that the proceedings are held by the tribunal expeditiously and that the adjudication is made at the earliest, preferably within four months of the date of first appearance being hereby fixed. The parties shall appear before the Tribunal for above mentioned inquiry on 11th September, 2017.

9. Tribunal's record shall be returned forthwith with copy of this judgment.

10. Copy of the order be also given *Dasti* to both sides.

11. The appeal as well as pending application stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 10, 2017/vk