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

Decided on: 22nd September, 2017

+ **MAC APPEAL No. 629/2015**

NARINDER KUMAR Appellant

Through: **Mr. Rajesh Kumar, Adv.**

Versus

RADHA DEVI & ORS. Respondents

Through: **Mr. Navneet Goyal, Adv. for R-1 to 3.**

+ **MAC APPEAL No. 641/2015**

NARINDER KUMAR Appellant

Through: **Mr. Rajesh Kumar, Adv.**

versus

SUBHASH SHARMA & ANR. Respondent

Through: **Mr. Navneet Goyal, Adv. for R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 27.01.2014 a motor vehicular accident is stated to have occurred at about 10.00 a.m. in the area of Nagar Van Park within the jurisdiction of police station Sagarpur, Delhi, wherein two pedestrians

while crossing the road were statedly hit by Maruti van bearing registration no. DL 2CAF 2736 (the van), it being driven in a rash or negligent manner by one Sudhir Kumar (a respondent in these appeals). Both the said pedestrians including Subhash Sharma and Prithvi Chand, suffered injuries, the latter (Prithvi Chand) dying in the consequence. Two accident claim cases (suit no. 443 & 444 of 2014) were instituted on 29.04.2014 before the motor accident claims tribunal, the former instituted by first to third respondents (collectively, the claimants) joining Mewa Devi (since deceased), describing as members of the family of the deceased Prithvi Chand, dependent on him and, the latter, for and on behalf of Subhash Sharma, the injured himself. In both the cases, besides the said Sudhir Kumar, stated to be the driver of the van, the appellant herein was impleaded as second respondent, he concededly being the registered owner of the van. The two cases resulted in separate judgments dated 15.01.2015, being passed by the same tribunal, whereby the claim that the accident had been caused due to negligent driving of the van by the said Sudhir Kumar (respondent) was accepted. The tribunal awarded compensation in each case and fastened liability on both the said persons including the appellant herein requiring him to deposit the award within the period specified.

2. The appeals at hand were filed questioning the above mentioned decisions of the tribunal whereby the contention of the appellant, as indeed of the respondent Sudhir Kumar, about they not being liable to pay, were rejected. It may be mentioned here that the appellant pleaded before the tribunal that he had already sold the van to one

Gaurav Sharma on 02.07.2012 whereafter he had no connection whatsoever with it. The other respondent Sudhir Kumar had appeared during the inquiry as a witness (R1W1) deposing to the effect that he had been falsely implicated by the police in the corresponding criminal case in collusion with the person who was actually driving. He denied having any connection with the accident.

3. Pertinent to note here that at the instance of the appellant, the above-mentioned Gaurav Sharma was summoned and examined as a witness (R2W1). In the said deposition, Gaurav Sharma admitted that he had taken the van from the appellant on 02.07.2012 stating further that there was a loan on the vehicle on which account it could not be got transferred in his name, though he also claimed that he had repaid the entire loan. Crucially, R2W1 also deposed that one Gaurav Rana, resident of Geetanjali Park, was the driver at the relevant point of time.

4. Though the appellant had taken the position to above effect denying any control over the van on the relevant date and time, there was no effort on his part or, for that matter, on the part of the claimants to implead Gaurav Sharma as a party respondent. The tribunal rejected the said contentions of the appellant, based primarily on the deposition of Gaurav Sharma for the reason that he (appellant) was the registered owner of the vehicle.

5. When the contentions to above effect were raised before this Court, by similar orders in both those appeals on 01.09.2015, the learned predecessor bench considered it proper to implead Gaurav Sharma as a party respondent to the appeals. Gaurav Sharma having

been impleaded and amended memo of parties having been filed in each of these matters, upon being served, he appeared in person before the Registrar. He is, however, not present when these appeals have been taken.

6. Against the above backdrop, the learned counsel for the claimants, in both these cases, fairly concedes that the issue would require further inquiry by the tribunal wherein the question as to who was in control of the vehicle at the relevant point of time will have to be determined, since that only would lead to adjudication of the issue as to the identity of the person vicariously liable. The version of Gaurav Sharma, as noted above, also gives rise to the possibility that the van may have been driven by a person other than the one held responsible by the impugned judgments. It is for the claimants, however, to take a call and decide on the proper course of action in such light with regard to the array of parties before the tribunal.

7. For the foregoing reasons, the impugned judgments, insofar as they hold the appellant to be liable to pay compensation are set aside. The claim cases are remitted to the tribunal for further inquiry. Since Gaurav Sharma was impleaded as a party respondent at the stage of appeals, appropriate steps shall be taken by the claimants to have him impleaded as a party in the claim petitions as well. Since he is not present at the hearing on these appeals today, steps shall also be taken, in all fairness by the claimants, to have his presence secured before the tribunal. For such purposes, if so required, and if so advised, the claimants would also have the liberty to incorporate suitable

amendments in the pleadings in their claim petitions. Needless to add, the tribunal shall follow the procedure in accordance with law.

8. In terms of earlier directions, the appellant had deposited an amount of Rs. 2,85,000/- in MAC Appeal No. 629/2015 which relates to the death case, this besides Rs. 25,000/-, it being the statutory amount. The said deposited amount as also the statutory deposit in the said appeal was allowed to be released to the claimants in the death case by order dated 16.09.2016. The order dated 01.09.2015 in MAC Appeal No. 641/2015 indicates that the appellant had been directed to deposit 50% of the awarded amount in the injury case with the Registrar General as a pre-condition to the stay of the execution, adjustment of an amount of Rs. 15,000/- having been given for the amount that was stated to have been already paid to the claimant. The order dated 16.09.2016, in the said appeal reveals that the appellant deposited Rs. 93,500/- which, along with statutory amount of Rs. 25,000/- were permitted to be released to the claimant Subhash Sharma.

9. The amounts already received by the claimants in these cases shall be liable to be adjusted against the compensation, if it is determined to be payable by the appellant in the further inquiry for which the claim cases have been remitted, as above. Conversely, if the tribunal were to hold that the appellant is not liable, appropriate directions with regard to the payments made by him to the claimants shall be passed.

10. The parties are directed to appear before the tribunal on 26th October, 2017.

11. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 22, 2017

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