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

Decided on: 14th September, 2017

+ MAC.APP. 289/2016 and CM APPL.12898/2017,
CM APPL.18932/2017

MEENA CHAUDHARY Appellant
Through: Mr. Rajeev Kumar, Advocate

versus

DEVENDER KATARIA & ORS. Respondents
Through: Mr. Sudhanshu Shekhar, Advocate for
R-1 to R-4
Mr. Ashok Chaitanya, Advocate for
R-5.

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

JUDGMENT (ORAL)

1. On 25.06.2011, a motor vehicular accident took place within the territorial jurisdiction of Police Station Baraut U.P. involving collision between the two vehicles, one being Tata Magic car bearing registration No.UP-17D-0991 (the car) and other a bus bearing registration No.DL-1PA-4667 (the bus), it resulting in death of Om Prakash Katariya who was traveling as a passenger in the car, the accident becoming subject-matter of investigation by the local police through First Information Report (FIR) No.549/2011 for offences punishable under Sections 279/337/338/304A/427 of Indian Penal Code, 1860 (IPC) of Police Station Baraut, District Baghpat, U.P.

2. The first to fourth respondents (collectively, the claimants) being the members of the family dependant on the deceased Om Prakash Katariya instituted accident claim case (MACP No. 555/11/14) on 22.12.2011 seeking compensation under section 166 of the Motor Vehicles Act, 1988. In the said claim petition, the fifth respondent herein (Shiv Ram) was impleaded as the first respondent, he admittedly being the person in whose name the bus had been initially registered. One Ex-Hon. Captain Partap Singh was also shown in the fray as second respondent but since there was nothing to substantiate his connection with the vehicles, his name stood deleted by order dated 25.08.2012. The sixth respondent (Jarnal Singh) was described in the said claim petition as the driver of the bus on account of whose negligence the accident had occurred, his name being shown in the fray as third respondent before the tribunal. Additionally, Reliance General Insurance Company Limited was also impleaded as fourth respondent before the tribunal but its name also stood struck off from the fray by order dated 25.08.2012 since there was no insurance policy shown to have been issued or being valid or effective in respect of the bus to cover the third party risk on the date of cause of action.

3. Shiv Ram (the first respondent), by his written statement dated 17.07.2013, contested the claim case by denying having any connection with the bus explaining that the bus was purchased by him as a second-hand vehicle from its previous owner with the help of finance arranged from a finance company (Pee Jay Finance Company Limited), however, on account of his inability to clear the estimated monthly installments (EMIs), the company having taken over the

vehicle from him on 20.02.2011 where after he had ceased to have any connection with it. By an application earlier moved, it had been brought out that after the accident during the course of investigation, the bus had been seized by the investigating police officer and taken to the *malkhana* of the Police Station from where it was released on *superdari* to the appellant (Meena Chaudhary), on the basis of directions of the concerned Chief Judicial Magistrate allowing her application to such effect, the vehicle being handed over to her through her father Lakhmi Chand on 25.07.2011.

4. On the basis of the submissions to such effect, as also copy of the temporary authorization in relation to the registration certificate issued on 24.10.2010 by the registration office of the department of Transport, Ghaziabad, U.P. reflecting the appellant to be the registered owner of the bus, by order dated 07.03.2012, notice was issued to her as well. In response to the said notice, which was duly served, she appeared through her husband before the tribunal on 07.07.2012. The application seeking her impleadment was eventually allowed by order dated 25.08.2012 whereby notice of the claim petition was also issued to her, opportunity being made available for her to file written statement. The appellant instead chose to remain absent from the proceedings and was thus set *ex-parte* by order dated 29.09.2012. It may, however, be added that after she had been set *ex-parte*, at a later stage on the same date of hearing she appeared in person to claim orally before the tribunal that she had never purchased the offending vehicle and that her name has been falsely dragged. The tribunal allowed her oral request for *ex-parte* order to be set aside so that she

could file written statement on the next date for which time was sought. In spite of such renewed opportunity, the appellant did not file any reply, her right to do so having been closed by order dated 17.11.2012.

5. During the subsequent proceedings in the course of which evidence was led by the parties which were participating, right through till the decision of the tribunal by judgment dated 21.07.2015, the appellant appeared intermittently through counsel but with no effort made at any stage to bring on record her pleadings or her evidence.

6. During the inquiry held by the tribunal, besides the claimants, Shiv Ram (sixth respondent) also adduced evidence, three witnesses having been examined at his instance they including he himself (R1W1), Ashok Kumar, Assessing Inspector of Pee Jay Finance Company Limited (R1W2) and Sub-Inspector Brij Pal Singh (R1W3), the investigating police officer of the concerned Police Station who had released the vehicle on *superdari* vide documents reflecting such release to be at the instance and in favour of the appellant. It may be added that the evidence of R1W2 cannot be read in as much as his examination-in-chief was never completed and he was never recalled even by Shiv Ram.

7. On the basis of available evidence, the tribunal held that the appellant was the owner of the vehicle, she being in control thereof at the relevant point of time and thus being vicariously liable to pay the

compensation thereby determined in favour of the claimants. It is the said finding and direction which is assailed by the appeal at hand.

8. Having heard the learned counsel for the appellant and the counsel representing fifth respondent (Shiv Ram), and having perused the pleadings and material on record, this court is of the opinion that the appeal must be dismissed, it being devoid of substance.

9. There is enough material brought on record to show that post-seizure of the vehicle by the police in the wake of the accident, the appellant had moved an application before the court of CJM asserting that she was the owner. It was at her instance that the CJM allowed the release of the vehicle on *superdari*. It does appear that while releasing the vehicle in terms of the said directions, R1W3 had not taken on record any formal authorization from the appellant in favour of her father Lakhmi Chand, who took over the vehicle, statedly at her behalf. But this deficiency in the procedure followed by the police officer would not detract one from the fact that the appellant had asserted herself to be the owner and had taken over the same from the police.

10. The evidence from the financier with whose help the fifth respondent had earlier acquired the vehicle may not be complete But, the evidence of the fifth respondent about the vehicle having been handed over back to the financier on 20.02.2011 has remained unimpeached. The fifth respondent thereafter had no connection whatsoever with the vehicle. Since the appellant surfaced soon after

the accident to claim the transfer asserting her title over the vehicle, the finding returned by the tribunal cannot be questioned.

11. The appeal is dismissed. The appellant is directed to satisfy the award by requisite deposit with the tribunal forthwith.

12. This disposes of the appeal and the pending applications.

SEPTEMBER 14, 2017

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R.K.GAUBA, J.