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

***Decided on :- 11<sup>th</sup> January, 2018***

+ MAC.APP. 45/2013

NAVEEN KUMAR

..... Appellant

Through: Mr. Peeush Sharma with  
Ms. Bharvi Thakur, Advocates.

versus

GANGA SARAN AND ORS

..... Respondents

Through: Mr. Sameer Nandwani with  
Mr. P. Acharya, Advocates for  
Respondent no.3.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The appellant had instituted accident claim case (MACT Petition No. 14/09) on 06.01.2009 before the Motor Accident Claims Tribunal seeking compensation for injuries suffered by him in a motor vehicular accident that occurred on 24.11.2008.

2. The averments on the basis of which he sought compensation under Section 166 of Motor Vehicles Act, 1988 were that he was riding on a motorcycle bearing registration No. DL -7S-AE-1553 (the motorcycle) on 24.11.2008 when at about 4 P.M. near Shyam Giri Mandir, Inter-State Bus Terminus Flyover, his motorcycle was hit from behind by a bus bearing registration No. DL-1PB-7654 (the bus). According to his case, the bus was driven negligently by the first respondent, it being registered in the name of the second respondent

and insured against third party risk for the period in question with the third respondent. The first and second respondents, in spite of service, having due notice and having filed a joint written statement denying the involvement of the bus, did not participate in the trial. The claimant examined himself as a witness (PW-1), besides examining two more witnesses Hari Om Sharma (PW-2) and Dr. Arun Yadav (PW-3). The third respondent (the insurer), on the other hand, examined Mr. Manohar Lal Dhyani (R3W1). It may be mentioned here that R3W1 was a mechanical expert who had subjected the two vehicles to inspection, in the course of investigation into the corresponding criminal case registered by the police by First Information Report No. 337/08 by police station New Usman Pur (FIR).

3. The Tribunal rejected the evidence of the claimant (PW-1) to the effect that the accident had occurred upon the motorcycle being hit from the behind by the bus, it having been driven in a negligent manner. It instead took note of the mechanical inspection reports of the two vehicles (Ex. R3W1/A and R3W1/B) and concluded that if the collision had actually involved the bus hitting the motorcycle from the behind, the motorcycle would have suffered damage on the rear side, which was amiss. The Tribunal, thus, proceeded to hold against the claimant's case and dismissed his claim petition by judgment dated 05.11.2012. It is the said judgment which is assailed by the appeal at hand.

4. The first and the second respondents, in spite of due service, have failed to appear even at the stage of appeal and thus suffered the proceedings *ex-parte*. The learned counsel for the claimant/appellant and the counsel for the insurer (third respondent) have been heard and with their assistance the record perused.

5. In the considered view of the Court, the approach of the Tribunal on the issue of involvement of the bus and negligence on the part of its driver was wholly improper and misdirected. The claimant had testified as PW-1, describing the sequence of events whereby the motorcycle driven by him was hit by the bus from behind. This is what was the import and effect of his case in the FIR as well. The FIR, it is shown by the additional evidence permitted to be adduced during the course of hearing on the appeal, was investigated into and the police found a good *prima facie* case made out against the first respondent and on that account launched an investigation for offences punishable under Sections 279 and 338 of Indian Penal Code, 1860 against him. The additional evidence (Ex.P1) shows that the first respondent, in fact, appeared before the court of Metropolitan Magistrate who permitted the offence under Section 338 of IPC to be compounded on paying of Rs. 20,000/- as compensation to the claimant for the injuries caused to him due to negligent driving of bus leading to the accident. Not only this, the first respondent even pleaded guilty to the charge under Section 279 IPC and, on that basis, he was held guilty and convicted and sentenced to fine by the court of Metropolitan Magistrate by order dated 07.11.2013.

6. Even if the proceedings before the criminal court were to be ignored, the fact remains that the only evidence concerning the sequence of events leading to the accident available before the Tribunal was in the form of testimony of the claimant appearing as PW-1. The said testimony had gone unimpeached and unchallenged. At the cost of repetition, one may say that the first and second respondents did not choose to participate in the proceedings nor challenged the credibility of evidence of PW-1. Neither they nor the insurer took any steps to put the driver of the bus in the witness box. In these circumstances, the word of PW-1 that his motorcycle had been hit by the bus from behind cannot be ignored on the basis of result of mechanical inspection of the two vehicles. After all, the mechanical inspector was not a witness of the sequence of occurrence.

7. In above view, the impugned judgment cannot be upheld. It is set aside. It is held that the accident had been caused leading to the injuries being suffered by the appellant due to negligence on the part of the first respondent, he being the driver. This naturally leads to conclusion that the first respondent is the principal tortfeasor who must be made responsible to pay compensation. The second respondent being the owner of the bus would, consequently, be liable vicariously to pay compensation. Further, the third respondent, it being the insurer, is liable to indemnify the second respondent and pay the compensation as may be determined.

8. The Tribunal did not proceed to compute the compensation that is to be awarded. In the above facts and circumstances, it would be

proper to remit the matter to that extent to the tribunal for appropriate further proceedings. Ordered accordingly.

9. The parties are directed to appear before the Tribunal on 26<sup>th</sup> February, 2018.

10. The appeal stands disposed of in above terms.

**R.K.GAUBA, J.**

**JANUARY 11, 2018**

*srb*

