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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th May, 2018

+ MAC.APP. 523/2016 and CM APPL.44587-44588/2016

YOGESH B CHAVAN Appellant

Through: Mr. Prashant Kenjale, Advocate with
Mr. Nishant, Advocate with appellant
in person.

versus

BALLU KHAN & ANR. Respondents

Through: Mr. R.K. Bachchan, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appeal at hand has been filed to assail the judgment dated 08.03.2016 of the motor accident claims tribunal in the accident claim case (MACT No.97/2010), which was instituted by the first respondent (the claimant) on 29.03.2010 whereby compensation was awarded in the sum of Rs.5,68,402/-, the liability having been fastened against the appellant and the second respondent jointly and severally to pay the said amount to the claimant with interest @ 9% per annum, it being the award of compensation for the injuries statedly suffered by him in a motor vehicular accident that had occurred on 11.09.2009 at

about 11:00 p.m. at Wazirabad Road near Ganda Nala, Gokulpuri, Delhi within the jurisdiction of Gokulpuri Police Station.

2. It was the case of the claimant before the tribunal that the accident had occurred due to rash or negligent driving of the motor vehicle described as Maruti Car 800 bearing registration No.DL-3CF-0900 (the car) by the appellant herein. It may be mentioned here itself that the car statedly is registered in the name of the second respondent. But, the appellant admitted at the trial that it was in his possession and control during the relevant period, his case being that it was parked in the premises of the army camp (Mess No.5) at Lodhi Road, New Delhi-110003, the appellant being an army personnel then posted at the said camp, he being an ordinary resident of District Satara in Maharashtra.

3. The claim petition was submitted with the averments that the claimant while going on his bicycle after finishing the job of tailoring at about 11:00 p.m. on 11.09.2009 towards his residence (described to be in Sunder Nagri, Delhi-110094), accompanied by his son Amiruddin on another bicycle, was hit by a car which had come at high speed from behind. The claimant stated in the petition that he had suffered injuries due to the said collision and was shifted by Police Control Room (PCR) van to Guru Teg Bahadur Hospital, Shahdara (the hospital) where medico legal certificate (MLC) was prepared, the injuries having been suffered including fracture in the spinal bone, the son Amiruddin, indicated in the petition to be “*an eye witness*”.

4. The second respondent, (the registered owner of the car), chose not to appear or participate in the proceedings. The claim petition, however, was contested by the appellant by his written statement. As noted earlier, while admitting that he had the control over the car at the relevant date, his case was that it was parked at his unit accommodation in break down condition, there being total denial of involvement of the car in the accident or negligence on his part.

5. During the course of inquiry into the claim case, the claimant examined himself as the prime witness (PW-1) on the strength of his affidavit (Ex.PW-1/X) which was a reiteration of the pleadings in the claim petition. He also examined one more witness Dr. Amte Pankaj, (referred to in the record of the tribunal as PW-5) – there concededly being only two witnesses, no other witness labeled as PW-2, PW-3 or PW-4) having been examined.

6. The appellant, on the other hand, examined himself (as R1W4), he also placing reliance on the testimony of Ashok Kumar (R1W1), Head Constable Yashbir (R1W2) and Satish Nandan (R1W3). While the evidence of R1W1 was essentially to bring home the fact that the car continues to be registered in the name of the second respondent, R1W2 proved copy of the daily diary (DD) entry No.24 as Ex.R1W2/A, which was recorded at 9:02 p.m. in Police Station Gokulpuri on the date of the alleged accident. R1W3 was a record clerk from the office of road transport office (RTO), but his testimony relating to the ownership of the case is not of much consequence. The appellant examined himself on the strength of his affidavit

(Ex.R1W4/A), he also placing on record the certified copy of the record of the corresponding criminal case (Ex.R1W4/2).

7. The copy of the DD entry (Ex.R1W2/A) indicates that the information about the accident had been received in the Police Station at 9:00 p.m. on 11.09.2009. If it were so, the pleadings in the claim petition, as noted in the corresponding police case, about the accident having occurred at 11:00 p.m. on 11.09.2009 are not believable. It may be mentioned here that the claimant had been examined in the hospital at 11:40 p.m. on 11.09.2009, he having been transported to the said facility by PCR van, the name of official connected thereto (Head Constable Anil No.1134/PCR-B36) having been found mentioned in the MLC which is part of the corresponding criminal case record relied upon by the appellant. The said PCR official has not been examined by the claimant. It has to be assumed, going by the sequence of events explained, that the PCR official would not have seen either the offending vehicle or its driver at the scene of occurrence.

8. The copy of the first information report (FIR) No.311/2009 is also part of the reliance of the appellant. Curiously, the claimant would refrain from placing reliance on it. The said FIR reveals that upon the information about the accident having been received by DD No.24-A, as referred to above, the investigating police officer had met the victim (the claimant) in the hospital where he had been taken, the attending medical officer having certified him even at that stage to be "*fit for statement*". The FIR also reveals that the claimant had refused

to give any statement upon being approached by the investigating police officer and instead had told him that he would come to the police station for the purpose. The FIR would further narrate that when the investigating police officer approached the claimant after a few days, at his residence, he again warded him off saying that he would give a statement after pondering over the matter (*“byan soch samajkar baad mein dunga”*). A statement eventually was made by the claimant to the police officer only on 12.10.2009, one month after the occurrence.

9. Pertinent to note that, in the FIR, the particulars of the motor vehicle which was involved in the accident was given simply as a car (noticeably make not indicated) it bearing registration No.”DL-3CFF-0900”. Noticeably again, the vehicle with which the appellant is connected bears the registration No.”DL-3CF-0900”, there being only one letter “F”. The statement in the FIR made by the claimant indicated that it was Amiruddin, son of the claimant who had noted the vehicle number, the car having fled away from the scene after the occurrence. The claimant did not say in the FIR that he had himself seen either the offending vehicle or its driver, his case being that he was hit from behind while he was peddling his cycle in the direction of his residence.

10. Amiruddin appears to have been examined by the police during investigation as copy of his statement under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.) recorded on 12.10.2009 is part of the material brought on record by the appellant. Going by the said

version of Amiruddin, he had seen the car driver because after the accident the said driver had rolled down the glass of the window. Amiruddin gave the description of the car as bearing registration No.DL-3CF-0900. Noticeably, in the said statement made on 12.10.2009 by Amiruddin to the police, there was no explanation offered as to why he did not go to the police immediately to lodge an FIR. There is nothing in the said statement to indicate as to why he was not in a position to make a statement to the police when the local police officials had approached the victim in the hospital on the same night as of the accident. In fact, pertinent to note, in the MLC the presence of Amiruddin as a person accompanying the victim is also not reflected, there being no explanation for such omission. The claimant has scrupulously avoided examining Amiruddin at the inquiry before the tribunal.

11. The tribunal has accepted the word of the claimant (PW-1) for the reason it is proved, also on admission, that the car was in the control of the appellant on the relevant date and also because the appellant was positively identified as the car driver in the test identification proceedings (TIP) which were held on 10.02.2010.

12. The less said about the TIP the better. A copy of the said proceedings is on record. It is incomprehensible as to why the proceedings were required to be held in jail premises when the appellant had already been released on bail, after formal arrest, on 17.11.2009. The TIP was conducted with only the claimant (PW-1) participating. But then, in the FIR, he had not even claimed to have

seen the car driver. If so, it was not for him to identify the car driver in the TIP. His son Amiruddin was cited by him as an eye witness, who had actually seen the car driver. Conspicuously, Amiruddin was never called for participating in the TIP.

13. In the considered opinion of this court, DD No.24 (Ex.R1W2/A) belies the case of the claimant about the accident having occurred at 11:00 p.m. on 11.09.2009 as has been his consistent version right from the time of lodging of the belated FIR through the inquiry into the claim case. If the accident had occurred at 11:00 p.m., an information about the such occurrence could not have been received in the Police Station two hours prior thereto as is reflected in the said DD entry.

14. Clearly, it is a case of fabrication of evidence and it will not be just and fair to fasten the liability on its basis against the appellant.

15. The appeal is, thus, allowed. The impugned order holding the appellant liable to pay the compensation is set aside.

16. The amount(s) deposited by the appellant shall be refunded to him.

17. The appeal and the pending applications stand disposed of in above terms.

R.K.GAUBA, J.

MAY 08, 2018

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