



\$~7

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

Date of decision: 26th July, 2023

+ **MAC.APP. 933/2016 & CM APPL. 41779/2022**

NARENDER SINGH

..... Appellant

Through: Mr. Ravindra Narayan, Ms.
Chhaya and Mr. Annam Pandey,
Advocates.

versus

LALIT KUMAR SHARMA & ANR

..... Respondents

Through: Mr. Praveen Kumar Rajput,
Advocate for R-1 with R-1 in
person

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 04.07.2016 passed by the learned Motor Accidents Claims Tribunal-01, Dwarka Courts, New Delhi (hereinafter referred to as the 'Tribunal'), in MACP No. 575/515/14 titled *Lalit Kumar Sharma vs. Narender & Anr.*, awarding a compensation of Rs.12,69,620/- along with interest at the rate of 10% per annum with effect from 14.11.2006 till realization thereof, in favour of the claimant/respondent no.1 herein.

2. Before the learned Tribunal, it was the case of the respondent no.1 that on 26.06.2006, while he was going for his duty on a bike bearing no. DL-9SK-3115, he was hit by a car bearing no. UAN 4919 which was



being driven by the appellant herein in a rash and negligent manner, as a result of which he sustained grievous injuries and was rushed to the hospital.

3. PW-2 Dr. P.K. Mangla, Chest Physician, Indian Spinal Injury Centre, Sec. C1 Vasant Kunj, New Delhi, deposed before the learned Tribunal that on 26.06.2006, the respondent no.1 herein was brought by the police to the hospital and was found having chest injuries from both sides and blood and air were oozing out from his lungs and he was having an acute respiratory distress. There was an air leak from the left lung and he required open surgery which was done by Dr. R.C. Jain on 30.06.2006.

4. Dr. R.C. Jain was examined as PW-3 and he had deposed about the operation. The respondent no.1 also suffered fracture in his left femur at two places and left forearm and was operated for the same.

5. The Investigating Officer of the case, Sub Inspector Munshi Singh, was examined as PW-5.

6. PW-6 Head Constable Chandu Lal (Retd.) deposed that on the date of the accident, he was on picket duty at Daulatpur Check Post and at about 8.45 AM, he saw one white coloured Maruti car bearing no. UAN 4919 coming from the Najafgarh side and going towards Jatigra when the accident took place between the motorcycle driven by respondent no.1 and the Maruti car.

7. I may herein note that a suggestion was given to PW-6 Head Constable Chandu Lal (Retd.), whether he was the one who lodged the report of the accident registered as DD No. 10A. He admitted to the



same, however, at the same time, denied that he had lodged the report regarding the accident of a dumper with the motorcycle. He further stated that the offending vehicle was coming on the main road while the motorcycle was coming from the side road. He stated that he had seen the accident happening.

8. On the other hand, the appellant examined himself as R1W1. In his statement, he deposed that on 26.06.2006, the police had reached his home to inquire about the accident. He told the police that he had sold the vehicle to a dealer. He stated that the police had reached his house on the basis of his voter ID Card and the sale letter which was lying in the offending vehicle. He stated that at the time of the alleged accident, he was not the owner of the offending vehicle. He further stated that as per DD No. 10A, the accident took place on 26.06.2006 between the motorcycle and a dumper, and that he had been falsely implicated in the case. He denied the suggestion that he was the owner of the offending vehicle even on the date of the accident, however, admitted that he had not filed any transfer document with regard to the said vehicle.

9. Based on the evidence on record, the learned Tribunal by its impugned Award held that the fact of the accident and the involvement of the offending vehicle and the respondent no.1 as the driver of the offending vehicle has been proved.

10. The appellant challenges the above findings of the learned Tribunal. The learned counsel for the appellant submits that DD No. 10A, which was recorded on the report of PW-6 Head Constable Chandu Lal (Retd.), reported the accident having taken place between the motorcycle



and a dumper. He submits that, in fact, by the order dated 31.03.2011 passed by the learned Metropolitan Magistrate, Dwarka Courts, New Delhi in FIR No.116/2006, the appellant was acquitted of the offences charged, as the prosecution had failed to prove that the appellant was driving the offending vehicle. He submits that, for the above reasons, the appellant could not have been made liable to pay compensation to the respondent no.1 by the impugned Award.

11. He further reiterates that the appellant had already sold the vehicle to a dealer as on the date of the accident and therefore, he could not be made liable.

12. On the other hand, the learned counsel for the respondent no.1 submits that no infirmity can be found in the impugned Award inasmuch as the offending vehicle was found in an accidental condition at the spot of the accident. The accident was duly proved through the evidence before the learned Tribunal. Merely because the appellant stood acquitted in the criminal proceedings, cannot cast a doubt on the involvement of the offending vehicle in the accident.

13. He further submits that the present appeal has been filed with a *mala fide* intent and the same is evident from the fact that before the learned Tribunal, the appellant contended that he had sold the vehicle to respondent no.2, based whereon, respondent no.2 was impleaded in the claim petition. The respondent no.2, however, in spite of service did not contest the claim petition. It is now admitted that the respondent no.2 is the brother-in-law of the appellant himself. He submits that a false story of transfer of the ownership of the vehicle was, therefore, set up by the



appellant before the learned Tribunal in order to evade the liability.

14. I have considered the submissions made by the learned counsels for the parties.

15. From the above, it would be apparent that the first issue raised by the learned counsel for the appellant is the denial of the offending vehicle being involved in the accident. It is the case of the appellant that DD No. 10A registered on the information given by PW-6 Head Constable Chandu Lal (Retd.) had stated that the accident took place between the motorcycle driven by the respondent no.1 and a dumper. The appellant, therefore, contends that the offending vehicle was not at all involved in the accident and has been wrongly implicated in the same. I find absolutely no merit in the said submission. Apart from the fact that DD No. 10A has not been filed on record in this appeal, even otherwise, a perusal of the order dated 31.03.2011 passed by the learned Metropolitan Magistrate, on which heavy reliance has been placed by the learned counsel for the appellant, shows that the involvement of the offending vehicle in the accident was accepted even by the learned Metropolitan Magistrate, on the evidence produced before him. I may quote the relevant findings of the learned Metropolitan Magistrate as under:

“Although it is established that the accident took place between aruti car no.UAM-4919 and motorcycle bearing no. DL 9SK-3115. However, in the present case the best witness to identify the accused was the injured. This witness had supported the case of the prosecution except identifying the accused. Therefore, he is not a hostile witness, but it is not the case of the prosecution that the injured fell unconscious after the accident and the driver of the car fled away





from the spot. Therefore, it was very obvious for the injured to identify the accused as the driver of the car which had caused accident but he failed to do so. This fact makes the prosecution version a little doubtful.”

16. The plea of the appellant of the offending vehicle not being involved in the accident in question and being wrongly implicated in the same, therefore, is rejected.

17. The reliance of the learned counsel for the appellant on the order dated 31.03.2011 passed by the learned Metropolitan Magistrate acquitting the appellant, also cannot assist the appellant in escaping his liability to pay the claimed amount to the respondent no.1. The appellant was acquitted from the criminal case holding that the prosecution had failed to prove that the appellant was driving the offending vehicle in a rash and negligent manner. The burden of proof in criminal case is entirely different and far stringent than in a case of claim of compensation due to a motor accident. Merely because the appellant was acquitted in the criminal case as his identity as a driver of the offending vehicle was not proved, cannot absolve the appellant of his liability to meet the claim of the injured as the ‘owner’ of the offending vehicle. In the present case, it has been proved on record that the accident occurred due to the offending vehicle being driven in a rash and negligent manner. Therefore, the appellant, as the ‘owner’ of the vehicle, cannot escape his liability to pay the compensation to the respondent no. 1.

18. The plea of the appellant that he was not the ‘owner’ of the offending vehicle as on the date of the accident, also cannot be accepted. Only an *ipse dixit* statement was made by the appellant before the learned



Tribunal that he had sold the offending vehicle to a 'dealer' prior to the date of the accident. No proof in this regard was placed before the learned Tribunal. In fact, even the name of the so-called dealer has not been disclosed. In fact, before the learned Tribunal, the appellant took a plea that he had sold the offending vehicle to the respondent no.2. The appellant is not in a position to deny that the respondent no.2 is none else but his own brother-in-law. Respondent no.2 has chosen to not appear before the learned Tribunal or before this Court. The plea of the appellant, therefore, clearly appears to be *mala fide* and, in any case, cannot be accepted in absence of any evidence. It has been repeatedly held that in terms of Section 2(30) of the Motor Vehicles Act, 1988, it is the registered owner of the vehicle who shall continue to remain liable to pay the compensation to the road accident victim, in spite of him having otherwise transferred the vehicle to a third person. Therefore, even otherwise, the appellant cannot escape his liability to pay the compensation to the respondent no. 1 as he remained the registered owner of the vehicle as on the date of the accident.

19. The learned counsel for the appellant submits that the offending vehicle was released in favour of respondent no.2 on *superdari*. In my view, it is of no consequence. Only because the vehicle was released in favour of the respondent no.2 on *superdari*, the same does not mean that he becomes the owner of the said vehicle. The manner and reason as to why the vehicle was released to respondent no.2 is not shown by the appellant.

20. The learned counsel for the appellant also places reliance on the



registration certificate of the offending vehicle placed on record by the respondent no.1 himself, and submits that the said registration certificate shows that the offending was registered in the name of respondent no.2. However, from a perusal of the said registration certificate, it is apparent that the date of transfer was 26.10.2006, that is, after the date of the accident. The said document, therefore, cannot support the plea of the appellant.

21. In any case, it is evident that the appellant is taking *mala fide* pleas inasmuch as, on one hand, he contends that the vehicle was transferred to a dealer, while on the other hand, now seeks to contend that the vehicle was transferred to the respondent no.2, who the respondent no.1 claims is a close relative of the appellant himself.

22. In view of the above, I find absolutely no merit in the present appeal. The same is dismissed. The appellant shall pay costs of Rs.25,000/- to the respondent no.1.

23. The pending application also stands disposed of.

NAVIN CHAWLA, J

JULY 26, 2023/ns/am