

NEPAL SINGH

v.

UPENDER SINGH

(Civil Appeal Nos. 4217-4218 of 2008)

JULY 7, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ]

Motor Vehicles Act, 1988 – Accident claim – Claimant injured in an accident involving a scooter – Claim petition against appellant – Appellant’s case that his vehicle was not the offending vehicle and seizure memo showed different number of scooter – Order of courts below that appellant’s vehicle was involved in an accident and he would indemnify award – Held: Not correct – It is not established that appellant’s scooter was involved in an accident – No material before High Court to conclude that investigating officer inadvertently mentioned wrong number – In absence thereof, High Court should not have arrived at a conclusion on mere surmises and conjectures – Order of High Court set aside and matter remanded back to it.

It was respondent’s case that he was injured in an accident where scooter bearing No.DL 3S 7420 was involved. Respondent filed claim petition against the appellant whose vehicle was involved in the accident. Appellant contended that his vehicle was not offending vehicle; that the seizure memo showed a different number of the scooter; and that at the relevant point of time he was not driving the vehicle in question. The MACT granted compensation and held that the appellant was to indemnify the award. High Court dismissed the appeal holding that the investigating officer inadvertently mentioned a wrong number and the number of the scooter in the seizure memo by the investigating officer was erroneous. Hence the present appeals.

A Partly allowing the appeals, the Court

HELD: 1.1 The conclusions clearly show that the vehicle owned by the appellant bear registration No. DL 3S 7420 and same was not seized by the investigating officer. In fact, number of the seized scooter was DL 3S 2472. Merely because the name of the person from whom the scooter is seized is the same as that of the appellant, that does not in any way establish that the scooter of appellant was involved in an accident. There was no material before the High Court to conclude that the investigating officer inadvertently mentioned a wrong number. [Para 6] [150-E & F]

1.2 There was no effort made by the claimant-respondent to verify as to who is the registered owner of the scooter DL 3S 2472, if any. In the absence of any material to show that the wrong number was noted by the investigating officer, the High Court should not have arrived at a conclusion on mere surmises and conjectures that the investigating officer inadvertently mentioned a wrong number. The approach of the High Court is clearly unsustainable. In the circumstances, the order of the High Court is set aside and the matter is remanded to it for fresh consideration on merits. [Para 7] [150-G,H; 151-A]

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4217-4218 of 2008

From the Judgment/order dated 28/5/2007 of the High Court of Delhi at New Delhi in MAC App. No. 219/2007

Nepal Singh Appellant-In-Person.

G Irshad Ahmad and K.S. Rana for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

H 2. Challenge in these appeals is to the judgment of the

learned Single Judge of the Delhi High court dismissing the MAC Appeal No.219/07 and order dismissing the application for review.

3. Background facts in a nutshell are as follows:

> Respondent-Bhupinder filed a claim petition stating that he was injured in an accident where scooter bearing No.DL 3S 7420 was involved. According to the respondent the accident occurred on 2.8.1995 at 11.20 a.m. He sustained injuries. The Motor Accidents Claim Tribunal, Delhi allowed the petition and granted compensation of Rs.57,635/- alongwith 6% interest thereon. Appellant was impleaded in the claim petition as the sole respondent. Stand of the appellant was that his vehicle was not offending vehicle and in any event he was not driving the vehicle in question at the relevant point of time as claimed. He relied on certificate issued by his employer which clearly indicated that at the relevant point of time he was working in the office and, therefore, the question of his vehicle causing the accident while being driven by him does not arise. The certificate issued by the responsible officer clearly indicated that the appellant who is Lower Division Clerk at the relevant point of time was present on his seat and worked for full day and he had not gone out. The Tribunal did not accept this stand and held that the appellant would indemnify the award.

Before the High Court the appellant had taken the stand that his vehicle was not involved in the accident. In fact the seizure memo shows a different number of the scooter. In the criminal court the evidence led clearly established that the scooter of the appellant was not involved in any accident. The High Court concluded that the investigating officer inadvertently mentioned a wrong number and the number of the scooter in the seizure memo by the investigating officer is erroneous.

4. In support of the appeal, the appellant who appeared in person contended that his vehicle had not caused any accident. In any event, the offending vehicle which was seized carried different registration number and there was no material

A before the Tribunal or the High Court to conclude that the investigating officer inadvertently mentioned the wrong number.

B 5. Learned counsel for the respondent on the other hand supported the judgment of the Tribunal and the High Court. The relevant observations of the High Court dismissing the appeal of the appellant read as follows:

C "In respect of the seizure memo Ex.PW1/7, it has to be noted that the scooter number shown as seized is DL-3S-2472. But, name of the person from whom the scooter is seized is that of the appellant.

It is thus obvious that the investigating officer has inadvertently mentioned a wrong number.

D Appellant who is present in person and is assisting his counsel has been questioned by me, whether he possesses any other scooter. He replies in the negative. This reinforces the fact that the recording of the number of the scooter in the seizure memo by the investigating officer is erroneous."

E 6. The conclusions clearly show that the vehicle owned by the appellant bear registration No.DL 3S 7420 and same was not seized by the investigating officer. In fact, number of the seized scooter was DL 3S 2472. Merely because the name of the person from whom the scooter is seized is the same as that of the appellant, that does not in any way establish that the scooter of appellant was involved in an accident. There was no material before the High Court to conclude that the investigating officer inadvertently mentioned a wrong number.

G 7. There was no effort made by the claimant-respondent to verify as to who is the registered owner of the scooter DL 3S 2472, if any. In the absence of any material to show that the wrong number was noted by the investigating officer, the High Court should not have arrived at a conclusion on mere surmises and conjectures that the investigating officer inadvertently mentioned a wrong number. The approach of the High Court is clearly

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unsustainable. In the circumstances, we set aside the impugned order of the High Court and remand the matter to it for fresh consideration on merits. A

8. The appeals are allowed to the aforesaid extent. There will be no order as to costs.

N.J.

Appeals partly allowed. B