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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP.723/2007

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Date of decision: 20th August, 2009

SHAHZAMA

..... Appellant
Through : Mr. S.P. Jain and
Mr. Sumit Gupta, Advs.

versus

RAKESH KUMAR & ORS

..... Respondents
Through : Mr. Pradeep Gaur, Adv.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

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|----|---|------------|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby his claim petition has been dismissed.
2. The accident dated 16th October, 2005 resulted in grievous injuries to the appellant. The appellant was driving his motorcycle bearing No.DL-7SZ-6515 on Ring Road near Vijay Ghat when he was hit by truck bearing No.HR-63-B-4498 from behind.
3. The appellant lost sight due to the injuries and the permanent visual disability was assessed to be 100%. The appellant also lost smelling power and sensation from hip joint to

right knee and left foot. The appellant remained hospitalized from 17th October, 2005 to 15th December, 2005 and underwent major operations for the head injuries.

4. The appellant appeared in the witness box as PW – 1 and deposed about the accident. The owner of the offending vehicle, in his written statement, admitted the factum of accident but denied the rashness and negligence.

5. The learned Tribunal dismissed the claim petition on the ground that the appellant has not produced any eye witness and the certified copy of the criminal case has not been placed on record by the appellant.

6. The learned counsel for the appellant submits that the appellant himself was the eye witness and the finding of the learned Tribunal in this regard is misconceived. The appellant has filed the certified copy of the record of the criminal case before this Court.

7. Section 168 of the Motor Vehicles Act provides that Tribunal shall conduct an inquiry into the matter. Section 169 of the Motor Vehicles Act provides that the Tribunal may follow such summary procedure as it thinks fit for conducting such an inquiry. The duty is cast on the Tribunal to conduct an inquiry. Even if the appellant had not filed the certified copy of the criminal case on record, the learned Tribunal ought to have conducted an inquiry and should have summoned the record of criminal case. It is unfortunate that the Tribunal did not conduct any inquiry into the matter and dismissed the claim petition.

8. In the facts and circumstances of this case, the impugned award of the learned Tribunal is set aside. The appeal is allowed and the claim petition is remanded back to the learned Tribunal. The learned Tribunal shall conduct an inquiry into the matter in terms of Section 168 and Section 169 of the Motor Vehicles Act and the Delhi Motor Accident Claim Tribunals Rules, 2008.

9. Considering that the appellant has suffered 100% permanent visual disability in the accident dated 16th October, 2005, the learned Tribunal is directed to expedite the inquiry and complete the same preferably within a period of six months.

10. The parties are directed to appear before the learned Tribunal on 1st September, 2009. The LCR be send back immediately through a special messenger.

11. The appellant has filed the certified copies of the record of criminal case before this Court on 24th February, 2009. The Court Master is directed to return the same to the learned counsel for the appellant for filing the same before the learned Tribunal.

12. Copy of this order be given 'Dasti' to learned counsel for both the parties under signatures of Court Master.

J.R. MIDHA, J

AUGUST 20, 2009

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