

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

% *Date of Judgment: 19.09.2011*

+ **MAC APPEAL No. 16/2010 & CM No.910/2010**

SHRI RAMESH CHANDER DHEER

.....Appellant

Through: Mr. Rajinder Gulati, Advocate.

Versus

SHRI JANG BAHADUR SINGH & ANOTHER

.....Respondents

Through: Mr. Rajesh Banati, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. The appellant is aggrieved by the order of the MACT dated 31.08.2009 vide which the claim filed by the petitioner Ramesh Chander Dheer had been dismissed.

2. The case of the petitioner is that he had suffered an accident on 24.01.1998 while he was on his way to Chandigarh in Maruti Esteem car; this was at 10:30 AM; while he was on the National

Highway between Ambala and Chandigarh at Lalru Village all of a sudden an Ambassador car bearing No. CHO 1G 1497 being driven by the driver Jang Bahadur Singh in a rash and negligent manner hit him as a result of which Ambassador Car had lost balance and collided with the Esteem car of the petitioner; the petitioner suffered grave and serious injuries. The present claim for compensation was filed admittedly after five years i.e. on 11.02.2002.

3. In the written statement filed by the respondents, it was denied that the respondent driver of the Ambassador car was guilty of negligence; contention was that the accident had occurred admittedly on 24.01.1998 and there was no explanation as to why the petitioner was lodging his claim after an unexplainable delay of five years; contention was that it was a false claim.

4. Admittedly pursuant to this accident, FIR No. 82/108 had been registered by the Punjab Police; pursuant to the FIR investigation was conducted and the Challan under Sections 279/337 IPC had been filed against the present petitioner. Record of the criminal case has been examined. There is no doubt to the proposition that the investigation in a criminal proceedings i.e.

FIR, statements recorded by the Investigating Officer in the
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course of his investigation as also the charge-sheet are documents of relevance and could be read as evidence in proceedings before the MACT. This has been held by a Bench of this Court in National Insurance Company Ltd. Vs. Pushpa Rana & Ors. reported in 2009 (ACJ) 287. These documents were accordingly read into the evidence by the MACT and there is no fault on this score. The grievance of the petitioner on this count is without any merit.

5. The appellant is aggrieved by the fact that the appellant has been held to be guilty for which there was no evidence; attention has been drawn to the site plan Ex. PW-1/A; it is pointed out that the place of accident had been depicted on mark 'C'; Esteem car is at point 'A' and Ambassador car has been shown at point 'B'; further contention being that a perusal of these documents clearly show that the Ambassador car was coming from the wrong side at the time when it hit the Esteem car being driven by the appellant; negligence could not in any manner had been attributed to the petitioner.

6. This submission of the appellant is without any merit; it is not fortified by the record. The vehicular movement of the traffic in the site plan as depicted by the arrows shows that the Maruti Esteem being driven by the appellant was going towards

Chandigarh; a divider has been shown in the middle of the road;

accident had occurred at point 'C' which is on the divider. Submission of the petitioner that Ambassador vehicle was coming from the wrong side is nowhere depicted in the site plan. The mechanical inspection report of the two vehicles highlighted by learned counsel for the appellant also does not support his case; mechanical inspection report of the Maruti vehicle No. 2271 shows that the damage has occurred on the front side i.e. the front light, front channel and front looking glass; the vehicle was not in a fit condition to ply; mechanical inspector report of the Ambassador car has also shown damage on the front side meaning thereby that this was a head-on collusion accident; submission of the appellant that there was a damage of the Ambassador car on the front and back side is not substantiated; even otherwise, this mechanical inspection report has to be read alongwith the testimony of eye witnesses RW-1 and RW-2 both of whom have come into the witness box. RW-1 was the driver of the Ambassador car; his deposition is to the effect that the accident had taken place because of rash and negligent manner of the Esteem driver; this was after overtaking another vehicle pursuant to which the head on collusion was resulted; his further testimony is to the effect that the driver of the Maruti vehicle received minor injuries; he was not limping; he had walked on foot and boarded to

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bus going towards Dera Bassi; to the same effect is the testimony of RW-2 Harjeet Singh who was sitting on the front side of Ambassador car. Both of them were eye witnesses; he has also deposed that the act of the driver of the Maruti Esteem was rash and negligent as a result of which the accident had occurred; further deposition being to the effect that the injured of the Maruti Esteem did not suffer any serious injury and not limping, he had boarded a bus towards Dera Bassi. In these circumstances, the question of application of doctrine of res ipsa loquitor is not applicable. The judgment relied upon by learned counsel for the appellant reported in 1985 ACJ 691 U.P. State Road Transport Corporation, Allahabad & others Vs. Deepti and others has no application.

7. It is an admitted fact that the challan which had been filed against the appellant under Sections 279/337 IPC, he had been acquitted by the judgment of learned Metropolitan Magistrate Ex. PW-1/X dated 03.02.2001. The appellant had been acquitted primarily as no evidence could be brought by the Prosecution; he could not be identified. This fact has correctly been noted in the impugned judgment. The judgment relied upon by learned counsel for the appellant reported in 1969 ACJ 135 Municipal Committee, Jullundru City Vs. Romesh Saggi & others relating to a judgment

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of the Criminal Court not being binding on the Civil Court has no application.

8. Record further shows that this accident had occurred on 24.01.1998. Admittedly this claim petition had been filed after five years i.e. on 11.02.2002. The submission of learned counsel for the appellant is that the appellant was unwell; he was suffering from various ailments and as such he could not file this claim in this intervening period. He has substantiated this submission before the MACT by filing the so called relevant medical record. Record however speaks otherwise. PW-2 had produced the medical record of Mata Chanan Devi Hospital Ex. PW-2/1 to show that the medical treatment meted out to the appellant; this record pertains to the year 2000; PW-4 Dr. G.S. Kochhar was a senior consultant of Mata Chanan Devi Hospital; on the perusal of Ex.PW-2/1 she has stated that the patient Ramesh Chander Dheer has been treated for paralysis of right side half of the body and paralysis had no nexus with the Asthama; Ex.PW-2/1 was the record relating to Chronic Asthamatic Bronchitis of the victim; there was no connection between the fracture of the right femur (contention of the appellant being that he had suffered fracture of the right femur) with the medicines prescribed in Ex. PW-2/1

which was for treatment of Bronchitis. Ex.PW-3/2 was the record

produced from Daya Hospital; this record was dated 21.08.1998. PW-3 admitted in his cross-examination that the X-ray plate and the film do not bear any date and as such it could not be stated as to when this X-ray on the appellant Ramesh Chander Dheer had been conducted. RW-4 Dr. Chhinder Kaur was yet another Doctor who had come into the witness box on behalf of the respondents wherein on the cross-examination on Ex. PW-1/ZA which was the discharge slip of Mata Chanan Devi Hospital it had been noted that the patient Ramesh Chander Dheer had been admitted for chronic Asthamatic Bronchitis on 29.09.2009. The entire evidence adduced before the MACT was of evidence relating to Asthamatic Bronchitis paralytic attack suffered by the appellant; there were not related to the fracture of right femur which was the contention of the appellant; contention being that his right femur had been fractured in this accident.

9. Submission of the appellant that this medical record from 1998 to 2000 evidence his serious medical conditions is not substantiated; he was admittedly a chronic patient of asthamatic bronchitis; record was for the period from 1998 to 2000; the accident had occurred on 24.01.1998; claim petition has been filed in February, 2002; explanation in not preferring this claim petition within a reasonable time is dissatisfactory and

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unexplainable. The statement of the Investigating Officer supporting investigation carried out by him had also been recorded.

10. Record shows that four issues had been framed by the MACT and all the issues have been answered issue-wise. Issue No. 1 was decided against the appellant; the MACT had returned a finding that the injuries sustained by the petitioner was not on count of rash and negligent act of the driver of the Ambassador car; as a necessary corollary issue No. 2 which related to compensation was also against the appellant; the Court had returned a finding that this issue in fact does not survive; the question of compensation did not arise when rash and negligent act of the driver of the Ambassador car could not be proved. Since this factum could not be proved, the question of compensation to the petitioner also did not arise; issues No. 3 & 4 also decided accordingly. Submission of learned counsel for the appellant that the Award of the MACT has not given issue-wise finding is incorrect submission and the reliance upon the judgment reported in 179 (2011) DLT 728 Allahabad Bank Vs. Sunil Dutt & others is thus totally misplaced.

11. The Apex Court in a judgment reported in Rajesh Kumar Vs. Yudhvir Singh PLR Vol. CLII (2008-4) 372 while dealing with the
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claim petition had noted that the disability certificate had been obtained after two years of the accident and author of the said certificate not having been examined, it could not have been admitted in evidence. The award in no manner suffers from any infirmity. Appeal is without any merit.

12 Dismissed.

SEPTEMBER 19, 2011

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INDERMEET KAUR, J.