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

Date of Decision: 1st February, 2016

+ **FAO 345/2000**

SMT. NIRMALA DEVI & ORS.

..... Appellants

Through Mr. J S Kanwar, Adv.

versus

GURPAL SINGH PASSI & ORS.

..... Respondents

Through Mr. A K Soni, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 08.08.1990, at about 11.15 PM, an accident occurred on bridge over Yamuna river involving two motor vehicles, viz., scooter No.DAM-6983 (“the scooter”) and Maruti van No.DHN-8757 (“the Maruti van”). The scooter rider Sri Kishan suffered injuries as a result of fall upon collision between the two said vehicles. He was shifted to hospital by the van of Police Control Room (“PCR”) where MLC bearing No.517/90 dated 08.08.1990 was recorded initially indicating him to be a person whose particulars were not known. He slipped into coma and died in hospital at 2.55 AM on 09.08.1990. On the observations of ASI Bhoop Singh of the local police station, who had been deputed to inquire into the accident, pursuant to the receipt of intimation about the accident vide DD No.25A, the FIR No.38/1990 was registered initially under Sections 279/337 of Indian Penal Code, 1860

(IPC). According to the FIR there was no eye-witness found by the Investigating Officer on his arrival at the scene.

2. On 06.02.1991, claim petition under Sections 166 read with Section 140 of Motor Vehicles Act, 1988 (“MV Act”) was presented by the appellants before the Motor Accident Claims Tribunal (“the Tribunal”) seeking compensation on account of death of Sri Kishan in the said motor vehicular accident from the first respondent herein, described as the owner and driver of the Maruti van, also impleading the second respondent herein, it being the insurer of the said vehicle for the period in question. The claim petition was registered by the Tribunal as suit No.313/1998. Upon notice, both the respondents appeared and contested the case. After inquiry, the Tribunal passed the judgment dated 17.05.2000 holding that the claimants had failed to prove that the accident had occurred due to rash or negligent driving of the Maruti van by its driver, thereby disbelieving the testimony of Suresh Kumar (PW-5), concededly the solitary witness produced by the claimants in support of contentions to such effect.

3. The appeal at hand was presented in August, 2000 to challenge the said finding and result of the claim case. It has remained hanging fire for over 15 years in this Court for reasons wholly and solely of the appellants/claimants and their counsel. Effective steps were not taken for proper prosecution. The appeal was dismissed in default on 20.07.2011, but restored on application by order dated 18.07.2013. Thereafter, on 08.08.2013 again none appeared for the appellants resulting in the appeal being dismissed in default and for non-prosecution. The application for restoration was filed but once again suffered to be dismissed in default and for non-prosecution on

09.09.2013. Once again, the appeal was restored by order dated 10.07.2014 and, yet, in the wake of the said order, the counsel for the appellants failed to appear on the very next date.

4. Be that as it may, arguments have been finally heard today and in the course of the hearing, the learned counsel has presented the certified copy of the charge-sheet with accompanying documents including the certified copy of the site plan prepared by ASI Bhoop Singh, on 09.08.1990 at the scene of accident. It only needs to be observed that though the certified copy of this all important document had been available to the counsel for the appellant since 14.08.1996, he has retained it on his file and not shared it with the Tribunal or the Court for the last so many years. So much for the vigilant prosecution or assistance by an advocate at bar! This Court can only empathize with those who had relied upon the counsel for effective prosecution of their legitimate interests.

5. The oral testimony of Suresh Kumar (PW-5) was disbelieved by the Tribunal for the reason his name was not mentioned in the MLC or in the FIR. From these two omissions, he was disbelieved on the reasoning that he could not possibly have been moving on his separate scooter alongside that of the deceased scooterist at the time of the accident. Even if the reasoning given by the Tribunal to disbelieve the oral evidence of PW-5 were to be upheld, it cannot be ignored that the FIR, as already presented before the Tribunal during the inquiry, and the charge-sheet certified copy of which has now been submitted before this Court clearly show the involvement of the Maruti van of the first respondent in the collision against the scooter of the deceased. The fact that the said collision took place on account of rash driving on the part

of the driver of the Maruti van is eventually brought out by the site plan prepared by ASI Bhoop Singh at the scene of accident. It shows, as was also stated by PW-5, that the scooterist was moving towards ISBT i.e. from the direction of east to west across Yamuna river. The evidence also shows that the Maruti van had approached the scene from the opposite side i.e. west to east. When ASI Bhoop Singh reached the spot he found the Maruti van extreme left side pavement of the carriage way from east to west. This, coupled with the skid marks of the tyres of the Maruti van, also noticed by the Investigating Officer, confirming the approach of the said vehicle from the opposite direction, leaves no room for doubt as to the fact that the collision occurred because the Maruti van had come in the wrong lane. Applying the principle of *res ipsa loquitur*, the negligent driving on the part of the driver of the Maruti van is writ large on the facts and circumstances of the case.

6. Since sufficient material was not placed before the Tribunal, it went solely by the word of PW-5. None the less, since the corroborating material has now been submitted before this Court, justice demands that the appeal be allowed and the finding against the claim that the accident had occurred due to rash or negligent driving on the part of the respondent be upturned.

7. Ordered accordingly.

8. The learned counsel on both sides fairly agrees that since the Tribunal did not apply its mind to the computation of compensation, it is just and proper that the matter to that extent is remanded. Thus, the issue of computation of compensation is remitted to the Tribunal for adjudication. The counsel for the appellants (claimants) submits that evidence on this issue has already been adduced and no further evidence

is required to be furnished. The counsel for the insurance company submits that he would check if any evidence in rebuttal has to be adduced. The Tribunal shall inquire from both sides afresh as to whether any further evidence is to be brought on the above noted subject.

9. The parties are directed to appear before the District and Sessions Judge, North-East on 30.03.2016. The learned District and Sessions Judge, North-East is requested to assign this claim case for aforementioned short inquiry and fresh adjudication to the Tribunal with appropriate jurisdiction. Having regard to the very old pendency of this claim case, the Tribunal is requested to complete the proceedings and pass a final judgment (award) as early as possible, not later than four months from the date now fixed for first appearance.

10. The neglect on the part of the claimants and counsel has been noted at length above. Needless to say that this shall have a bearing on the claim towards interest. For facilitating its proceedings, and completeness of its record, the certified copy of the charge-sheet presented before this Court, along with copy of the proceedings recorded in this appeal till date, shall be sent to the Tribunal with its record. A copy of the charge-sheet, however, shall be retained on the file of the appeal.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 01, 2016
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