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

Date of Decision: 22nd February, 2016

+ **MAC.APP. 195/2011**

URMILA & ORS

..... Appellants

Through: Mr. V.S. Yadav, Adv.

versus

ABHISHEK ANAND & ORS

..... Respondents

Through: Mr. Siddhant Jaiswal for Ms. Suman
Bagga, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The claim petition of the appellants under Sections 166 and 140 of the Motor Vehicle Act, 1988 (M.V. Act) registered as MACT case no.54/10/05 was dismissed by the Tribunal vide judgment dated 18.11.2010 which is impugned through the appeal at hand.
2. From the impugned judgment it is clear that a cross case registered as claim petition no.55/10/05 had been filed respecting the death of one Rishabh Anand, which occurred as a result of the same accident which is the subject matter of the appeal at hand. The facts narrated in the impugned judgment show that, at about 11.40 am on 06.08.2004 there was collision between two scooters, one bearing no.UP-12E-3386 and the other bearing no. DL-8S-AE-0415, the former driven by Dinesh Chand Yadav and the latter statedly driven by Jogeshwar Prasad (first respondent herein). Dinesh Chand Yadav, the rider of the former scooter and Rishabh Anand, the pillion

rider of the latter scooter died as a result of the injuries consequently suffered, giving rise to the cause of action for claim petitions. In each claim case, allegations of negligent driving were levelled by the claimants against the driver of the other scooter. The Tribunal while dealing with the issue of negligence recorded its observations in the following words:

“The controversy who was actually driving scooter no.DL-8S-AE-0415 whether respondent no.1 or his deceased son Sh. Rishab Anand as well as due to whose faults and negligence accident had happened is already decided in another cross case bearing no.55/10/05. On the same set of evidence, it has already been held that accident had happened due to rash and negligent driving of scooter no.UP-12E-3386 by deceased Sh. Dinesh Chand Yadav and compensation has been ordered to be paid by the petitioners on account of death of Sh. Rishab Anand. Same findings have to be given and made applicable in the present proceedings also due to similar evidence.”

3. It is the grievance of the claimants in the appeal at hand that the above was not a correct approach to the issue on the part of the tribunal. It is also submitted that the claim or award of compensation on the principle of no fault liability under Section 140 of Motor Vehicles Act, 1988 was not even considered by the Tribunal.

4. The submissions of the appellants are correct. The tribunal was duty bound to consider the evidence led before it on the claim petition presented by the appellants, rather than be swayed by the impression gathered on the basis of the evidence in another case, even though it may have given rise to similar evidence being adduced. It must be clarified, at the same time, that the tribunal would have been within its jurisdiction to reach similar

conclusions on facts in the two cases. But, for such purposes, it was required to deal with the evidence adduced rather than short shrift the issue by saying ‘*same findings have to be given and made applicable*’ to the case at hand, as has been observed.

5. Thus, the impugned judgment is set aside. The matter is remitted to the tribunal for afresh adjudication in accordance with law on the basis of the evidence adduced before it during the inquiry. While doing so, it shall also consider the prayer for compensation under no-fault liability clause contained in section 140 MV Act.

6. The parties are directed to appear before the Tribunal on 29.03.2016. The Tribunal’s record shall be returned.

7. The appeal is disposed off accordingly.

FEBRUARY 22, 2016
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R.K.GAUBA, J

