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

Date of Decision: 01st March, 2016

+ **MAC.APP. 486/2014**

BABY ANJANI & ORS

..... Appellants

Through: Mr. Arun Srivastava & B. K. Tomar,
Advs.

versus

JAI RAM SINGH & ORS

..... Respondents

Through: Mr. Rajeev M. Roy, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Raman Arora, died as a result of injuries suffered at about 05:00 PM on 30.11.2008 in a motor vehicular accident that had occurred in front of Suvidha Apartment Gate Sector-13 Japanese Park Road, Rohini, Delhi. His wife, two minor children and father (the appellants) brought a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) which registered it as MACT case no.91/2009. In the said claim case, it was alleged that the accident has been caused due to rash/negligent driving of a motorcycle described as bearing no.DL-4SAN-3327 (the alleged offending vehicle) statedly owned by the second respondent and driven by the first respondent,

it concededly being insured against third party risk with the third respondent.

2. The driver and the owner of the alleged offending vehicle by their written statements denied the allegations of the involvement or rash/negligent driving. The insurance company by its written statement denied its liability to pay.

3. During the inquiry, the claimants examined four witnesses including the first appellant (the wife) appearing on the basis of her own affidavit, besides Inspector Satish Maheshwari (PW2), Amit Gupta (PW3) and Kashmere Lal (PW4). Out of the said four witnesses, Amit Gupta has been presented as an eye witness but his statement recorded before the tribunal was neither here nor there.

4. On 29.10.2013, the claimants having examined the third and fourth witnesses sought for fifteen days time to come up with certified copies of record of the corresponding criminal case. The tribunal declined to grant any such further opportunity. Though the corresponding short ordersheet of the day would not so clearly reflect, the observations in (para 9 & 10 of) the judgment passed on the same date need to be quoted in this regard:-

“ Onus of proving of issue No.1 was on the petitioner who was require to prove by leading evidence that accident was caused due to rash and negligent driving of offending vehicle by the driver in question. He summoned eye witness and examined him orally. At this stage after evidence is closed petitioner seeks another date certified copies placed by him. The only eye witness on record is Amit Kumar who has made his statement before the tribunal except notice U/s 133 (2) there is nothing. It is submitted that there is statement of one

Pankaj Goyal who stood surety as cited in the criminal case as a surety of the driver.

At this stage, Sh. Ramanand state that he has not closed his evidence and he be given opportunity to give evidence and same is position of the two minor children who insists that in view of future of children involved another date may be given but I am afraid there is nothing else on record which can help the case of the petitioner since the sole eye witness cited by the police and summoned by the petitioner has not supported the version of FIR recorded on DD entry on the basis of which and as per the police case Amit Gupta was examined as summoned witness by the petitioner who has not supported the version of the FIR and the police case and stated specifically that motorcyclist slipped due to which he fell down and suffered injuries. Still Mr. Ramanand Adv. for petitioner insists another date may be given after he closed the evidence. No ground was found and hence the request was declined.”

5. Having declined to give further opportunity, the tribunal proceeded to answer the first issue concerning involvement and negligence against the claimants and on that basis dismissed the claim case.

6. The manner in which the tribunal has handled the inquiry calls for much to be desired. It was wholly unfair to short shrift and scuttle the procedure in the manner done. During the course of arguments, the learned counsel for the insurance company argued that the driver and owner in their reply to the claim petition had declined involvement and that the mechanical inspection report of the two vehicles allegedly involved, as prepared during the investigation of the corresponding criminal case, would also show that there was no collision. This also would not be a correct approach to the issue as the evidence has to be examined and appreciated for its worth only after it has been presented.

7. Since the claimants were seeking further opportunity for evidence, in the given facts and circumstances, it should have been allowed and only thereafter the tribunal would have been within its jurisdiction to consider its worth and effect.

8. For the foregoing reasons, the impugned judgment is set aside. The claim case is remitted to the tribunal for further inquiry in accordance with law. The parties are directed to appear before the tribunal on 26th April, 2016.

9. The appeal is disposed of in above terms.

MARCH 01, 2016
ssc

R.K. GAUBA
(JUDGE)

