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

**Date of Decision: 21<sup>st</sup> March, 2016**

+ **MAC.APP. 740/2013**

**ABHISHEK**

..... Appellant

Through: Mr. S.S. Jain, Adv.

versus

**PUNEET KHATRI @ VICKY & ORS.**

..... Respondents

Through: Mr. K.L. Nandwani, Adv. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. Appellant's accident claim case under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) registered as MACT case No. 48/2012 resulted in judgment dated 30<sup>th</sup> April, 2013 whereby compensation was declined on the reasoning that he had "*failed to connect and prove the negligence and injuries of his person with the accident in question*". The tribunal in (para 10 of) the impugned judgment observed thus:-

*"As the onus of proving the issue No.1 was on the petitioner who examined herself in his support of his case as PW1. He is also the eye witness of the accident and tendered his evidence by way of affidavit Ex.PW1/A. From perusal of the affidavit Ex.PW1/A of the petitioner, he has nowhere stated in the same that the offending vehicle hit her and caused the injury in her person. The petitioner has failed to connect the injuries to the*

*accident by making the statement either on affidavit or otherwise. She has failed to corroborate the contents of DAR with his affidavit Ex.PW1/A. As the petitioner has failed to connect the injuries suffered by her by making statement on the affidavit in the accident in question, this issue is accordingly decided against the petitioner and in favour of the respondents.”*

2. Having heard all sides and gone through the record, it is noted that a detailed accident report (DAR) had also been submitted by the police on the basis of evidence gathered in the corresponding criminal case. The appellant when called upon to lead evidence, submitted affidavit (Ex.PW-1/A), which appears to be a case of poor preparation by the counsel who was assisting him. The facts declared and affirmed in para 2 thereof read as under:-

*“That on 12/10/2011 at about 1.00 p.m. I was going on motorcycle from West Metro Station on Rohini Delhi to K.N. Katju Marg Delhi suddenly at T point, the respondent No.1 came on his motor cycle bearing No. DL 8S NC 6053 (Pulsar) driven by respondent No.1 at a very fast speed, rashly negligently and without causing the rules of traffic came from the side of T point, read light Near Sachdeva public school, KNK Marg Delhi whereby the injured got multiple injuries and fracture in his right leg due to this accident”.*

3. Clearly, there is a hiatus in the facts narrated in the aforementioned paragraph. It may be that in the affidavit of the appellant, necessary facts were not forthcoming, but the tribunal was well aware of the facts reported by the police in the DAR. It was the obligation and duty of the tribunal also to ascertain the necessary facts and seek clarity where there was a gap.

4. The claim for compensation under Section 166 of MV Act cannot be allowed to be short shrifted in the manner done.

5. The appeal is, thus, allowed. The impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry in accordance with law. The tribunal shall allow the appellant to furnish a fresh affidavit, and in case necessary, also allow him to be orally examined and further, if necessary, ascertain the requisite facts for complete and effective adjudication. Needless to add, the contesting respondents are at liberty to cross-examine the witness(es) and rebut by adducing evidence, if any.

6. The parties are directed to appear before the tribunal on 29<sup>th</sup> April, 2016.

7. The appeal is disposed of in above terms.

**R.K. GAUBA**  
**(JUDGE)**

**MARCH 21, 2016**  
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