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

Date of Decision: 30th March, 2016

+ **MAC.APP. 713/2014**

MEHARBAN

..... Appellant

Through: Mr. Sunil Kumar, Adv.

Versus

SMT. SHAKUNTALA & ORS

..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Vijender Singh died as a result of injuries suffered in a motor vehicular accident that occurred at about 5.30 p.m. on 19.10.2009 when the motorcycle driven by him was hit by a maruti car bearing registration No. HR 26 N 8119 (the offending vehicle) statedly in a rash/negligent manner. His widow, two children and father (first to fourth respondents herein) filed a claim petition under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) on 11.10.2010 seeking compensation. The said case was registered as MACT No. 311/2010. The appellant was impleaded in the case on the allegations that he was the driver of the offending vehicle, in addition to Charan Singh, registred owner of the offending vehicle and Wajid to whom Charan Singh had claimed to have sold the offending vehicle also impleaded as second and third respondents.

2. The tribunal held inquiry and, by judgment dated 23.04.2014, concluded that the accident had occurred due to rash/negligent driving of the offending vehicle by the appellant. It found that the second respondent before the tribunal i.e Charan Singh had not been able to prove that he had sold the offending vehicle to Wajid. Thus, Wajid was exonerated. The tribunal assessed the compensation at ₹ 5,72,864/- and fastened the liability on the appellant and Charan Singh jointly and severally, distributing the compensation in favour of the widow (first respondent herein) and father (fourth respondent herein) in the ratio of 70% and 30%.

3. The appellant, by appeal at hand, questions the correctness of the finding that he was the driver of the offending vehicle at the time of collision against the motorcycle driving by the deceased. He points out that in the first information report (FIR) No. 9/2010 registered in Chandi Nagar, District Baghpat (UP), based on the statement of the son of the deceased, there was no reference to the identity of the driver of the offending vehicle. He also points out that in the evidence led before the tribunal, primarily through the statement of Sakuntla (PW-1) on the strength of her affidavit (Ex.PW-1/A) and Dinesh (PW-2) on the basis of his affidavit (Ex.PW-2/A) disclosed that there is nothing to connect him with the driving of the offending vehicle.

4. Indeed, in the evidence of PW-2, presented as an eye witness, it is vaguely stated that the accident had occurred due to negligence on the part of the driver of the offending vehicle without his particulars being mentioned. Noticeably, the appellant in his written statement had contested the claim case, *inter alia*, taking the position that he was not the driver of the said vehicle at any stage.

5. In the face of above contentions, the learned counsel for the claimants submitted that sufficient evidence was available it having been gathered by the investigating police which had probed the FIR leading to the prosecution of the appellant for the offences under Sections 279/304 A of Indian Penal Code, 1860 (IPC) before the competent criminal court. He, at the same time, also submitted that the appeal may be presently allowed and the finding of fact recorded by the tribunal against the appellant may be set aside, with liability fastened on him vacated, for the matter to be remitted to the tribunal for further inquiry into this issue.

6. It is noted that the appellant, having filed the written statement, had suffered the proceedings before the tribunal *ex-parte*. In the overall facts and circumstances, the request of the claimants appears to be just and proper. Thus, the impugned judgment insofar as it fastened liability against the appellant is set aside. The issue as to whether he was the driver of the offending vehicle at the relevant point of time and, further, if he is liable to pay compensation is remitted to the tribunal for further inquiry and fresh adjudication. During the further inquiry, the claimants shall be entitled to lead additional evidence to bring home their case about complicity of the appellant in the accident. Needless to add, the appellant shall be bound to participate in the said proceedings and also be entitled to lead evidence in rebuttal, if any.

7. The claimants and the appellant are directed to appear before the tribunal for further proceedings in the above light on 2nd May, 2016.

8. For removal of doubts, it is clarified that this judgment does not in any manner disturb the findings recorded by the tribunal against Charan Singh (the registered owner of the offending vehicle) and, therefore, the

claimants are at liberty to take steps to enforce the award against him.

9. The appeal is disposed of in above terms.

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

MARCH 30, 2016/nk

