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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 24th February, 2016

+ **MAC.APP. 1245/2012 & CM No.20506/2012**

RAJNI & ORS.

..... Appellant

Through Mr. Navneet Goyal, Adv.

versus

MILAP SINGH & ORS.

..... Respondent

Through Mr. Pankaj Seth, Adv. for R-2

Mr. Nagendra Kasana, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On the Claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), presented on 05.04.2006 and registered as MACT case No.483/2006 seeking compensation on account of death of Raman Kumar Taneja in a motor vehicular accident that occurred on 25.08.2005, was dismissed by the Tribunal vide judgment dated 21.05.2012 which is impugned through the appeal at hand.

2. In the claim petition it was contended that the deceased was going in his Martui car bearing no. HR 06 D 0896 with two passengers including Sudhir Rana on the front seat and Lalit on the rear when, at about 11 PM in the area of Bhalaswa village, the car was hit by truck bearing No.HR 56 3146 (the truck) causing injuries to all the occupants, Raman Kumar Taneja (the

driver), dying as a result. The accident was subject matter of first information report (FIR) No.593/05 registered for offences under Sections 279 and 304A of Indian Penal Code, 1860 (IPC) in police station Jahangirpuri, Delhi. It is admitted that the truck is owned by the first respondent herein and that it was insured against third party risk for the period in question with the second respondent herein. It is stated that the truck was driven by the third respondent and that it was on account of rash/negligent driving by him that the collision occurred. It may be noted that the third respondent, by way of his written statement, denied any such role claiming that he had left the job of driver in 2004.

3. During inquiry, aside from evidence of the first claimant (appearing as PW1), the appellants relied on evidence of Mukesh Lamba (PW2) deposing through his affidavit (Ex.PW2/A). According to PW2, the accident had occurred in his presence as he was also moving on the same road in the same direction driving his own car, the truck having overtaken his vehicle and causing the accident against the car of the deceased immediately thereafter.

4. The Tribunal was not satisfied with the evidence of PW2 and while taking note of the fact that the police had also closed the investigation of the case terming it as a case of “hit and run” returned the finding that the truck of the respondents was not involved.

5. It has been argued on behalf of the appellant that hoping that the testimony of PW2 would be accepted, they had not led further evidence for corroboration even though the other occupants of the car (Sudhir Rana and Lalit) have all along been available and their version would provide corroboration. It is submitted that complaint made by Lalit to the investigating police officer, though noted by the Tribunal in the proceedings

in the course of inquiry, no benefit on that account was accorded.

6. The submission now made is that the impugned judgment may be set aside and further opportunity be given to the claimants to prove the involvement, and negligence of the driver of the truck of the respondents. The learned counsel for the respondents submitted no objection to the prayer thus made.

7. In view of the above, the impugned judgment is set aside. The claim case is remitted to the Tribunal for further inquiry in the course of which the claimants shall be entitled to lead further evidence. Needless to add, the respondents will be entitled to not only participate by cross-examining the additional witness of the claimants but also by leading evidence in rebuttal, if any.

8. The parties shall appear before the Tribunal for further proceedings in accordance with law on 08.03.2016.

9. The Tribunal's record shall be returned.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 24, 2016/VLD