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

Decided on: 15th November, 2017

+ **MAC APPEAL 403/2012 and CM 6838/2012 (stay)**

**COMMANDANT, MINISTRY OF DEFENCE,
HQ, DRDO & ANR.**

..... Appellant

Through: **Mr. Jaswinder Singh, Advocate**

versus

SUCHITRA GUPTA

..... Respondent

Through: **Mr. Amit Kumar Pandey,
Advocate**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had instituted accident claim case (suit no.901/2010) on 02.02.2010 before the Motor Accident Claims Tribunal (Tribunal) seeking compensation for injuries suffered by her statedly in a motor vehicular accident that had occurred on 13.08.2009 alleging that it had been caused due to negligent driving of Ambassador car bearing registration no.98B 65545P (car) of the first appellant, it being driven at the relevant point of time by its employee (second appellant). It was her own case that at the time of the accident, she was travelling on the pillion of motorcycle bearing registration no.UP-15-AB-5598 (the motor cycle). Pertinent to observe here itself that in the claim petition, she would not reveal the

identity of the motorcycle rider though at the stage of her evidence, she appearing as PW-1 on the strength of her affidavit (Ex. PW1/A) she added that the motorcycle rider was her brother, not disclosing his full particulars even at that stage.

2. The record of inquiry before the tribunal includes copies of the documents relating to the investigation of the corresponding police case registered vide FIR no.309 of 2009 in police station Hauz Khas, this including copy of the site plan (page 561 of the tribunal's record) on which reliance was placed. The said site plan purportedly prepared by the local investigation police officer, would show that the collision took place at the turning of a road where the motorcyclist had approached from the south direction he having moved towards north, intending to take a turn with the road towards east. The car, on the other hand, had come from the direction of east and was taking a left turn towards south. PW-1, during the course of her testimony, would concede that both the vehicles had approached the place of occurrence from opposite directions and further that she was not wearing any helmet over her head.

3. The Motor Accident Claims Tribunal (Tribunal), by its judgment dated 31.10.2011, returned a finding holding the car driver responsible and awarded compensation determined in the sum of Rs.16,93,500/-, fastening the liability on the appellant to pay.

4. The appeal at hand was filed questioning the correctness of the finding on the issue of negligence, reliance being placed, *inter alia*, not only on the above facts but also the evidence of the second appellant, he having appeared in his defence as RW-1, on the strength

of his affidavit (Ex. RW1/A), also relying on the evidence of two other witnesses, they being Tej Bahadur (RW-3) and Nem Singh (RW-4) deposing on the basis of their respective affidavits (Ex. RW3/A and RW4/A), this over and above the testimony of Sanjay Tandon (RW-2), speaking on the strength of his affidavit (Ex. RW2/A), he being Director in the DRDO, a department under the Ministry of Defence and travelling in the car as a passenger at the relevant point of time.

5. During the course of arguments, the learned counsel for the appellant submitted that the approach of the tribunal to the issue of negligence was wholly erroneous such that it took it as its duty to reach findings on facts only on the basis of “*prima facie*” view of the matter as is reflected by the use of such expression in (para 10 of) the impugned judgment. It is also pointed out that in a case of this nature, the version of the motorcycle rider would have been crucial but for reasons unexplained, he has been kept out. It is the grievance of the appellant that the relevant considerations including the fact that the accident had occurred head-on, with two vehicles having approached the scene from opposite directions and the admission that the claimant injured was not wearing a helmet over her head as a pillion rider, have not been appropriately considered by the tribunal.

6. The learned counsel for the claimant (first respondent), after some arguments, fairly conceded that since the motor cycle rider was the brother of the claimant, in his absence, the findings returned by the impugned judgment cannot be upheld and so requested that he may be given an opportunity to examine him as an additional witness. He thus submitted that while the appeal may be allowed and the

impugned judgment may be set aside, the matter may be remitted to the tribunal for further inquiry. The counsel for the appellant, on being asked, submitted that he would leave the request thus made by the claimants to the court for its consideration.

7. On the foregoing facts and in the circumstances, this court ought to refrain from passing any observations or comments on the issue of negligence at this stage. The impugned judgment is set aside. The claim case of the first respondent is remitted to the tribunal for further inquiry. The tribunal is reminded of its duty to reach out to the truth, if necessary, by examining all relevant witnesses which would include not only the motorcycle rider but also the investigating police officer who would assist in appreciating the lay-out of the road(s) and the exact place where the collision took place and give justification, if any, on the part of the driver of either of the two vehicles to be in the lane where they were at the opportune moment.

8. It may be further added that though the test in such cases involving liability in torts may not be the same as that in criminal jurisdiction, the conclusions to be reached on the test of preponderance of probabilities would, nonetheless, be conclusive and not “*prima facie*”, as is the expression used by the tribunal.

9. The parties are directed to appear before the tribunal for further proceedings on 15.12.2017. Given the old pendency of the claim, it is expected that the tribunal will reach fresh adjudication as expeditiously as possible, preferably within six months of the date hereby fixed for first appearance. It is hoped and expected that the parties on both sides will cooperate with the tribunal in this regard.

11. The appeal and the pending application are disposed of in above terms.

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