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

Decided on: 18th December, 2017

+ **MAC.APP. 730/2006**

VED PRAKASH GOEL & ANR Appellants

Through: Mr. Arun Srivastava, Advocate
with Mr. Anupam Srivastava,
Adv.

versus

S.D.SINGH & ANR. Respondents

Through: Mr. Pankaj Seth, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants were the claimants before the motor accident claims tribunal (the tribunal) in accident claim case (Suit No.582/2003) seeking compensation under Section 166 of the Motor Vehicles Act, 1988 on account of death of their 23 years old bachelor son Mohit Goel, in a motor vehicular accident that had occurred on 18.03.2003 involving collision between the two vehicles, one a Maruti car bearing registration no.DBA 5207 (the maruti car) and the other a Qualis car bearing registration No.DL-3CQ-7516 (the qualis car). The deceased was admittedly driving the Maruti car while qualis car was driven by the first respondent, he also statedly being its registered owner and at whose instance it was insured against third party risk for the period in question with the second respondent (insurer).

2. The tribunal held inquiry in the course of which the claimants examined, amongst others, Abhinav Goyal (PW-2) he being presented as an eye witness. On the other hand, the first respondent appeared as his own witness (R1W1), the tribunal finding it necessary and, therefore, summoning and examining Sub-Inspector S.N. Yadav (court witness No.1), he being the investigating police officer of the corresponding criminal case being First Information (FIR) No.60/2003 of Police Station Sector 39, Noida District Gautam Budh Nagar, U.P. The tribunal concluded, by judgment dated 29.05.2006, that the accident had occurred due to negligence both on the part of the deceased and the first respondent, thus, apportioning the liability. It determined the total compensation payable in the sum of Rs.25,48,050/- but on account of contributory negligence to the extent of 50%, it directed the second respondent, the insurer, to pay only half of the said amount to the claimant.

3. The appeal at hand questions the above finding on the issue of contributory negligence.

4. The learned counsel for the claimants and for the insurer have been heard and the tribunal's record perused with their assistance.

5. In the opinion of this court, the tribunal has appreciated the facts and circumstances of the case and the evidence led before it in proper perspective, to reach a correct conclusion which, therefore, does not call for any interference. Though, PW-2 testified, on the strength of his affidavit (Ex.PW-2/A) that he was following, in a car accompanied by his uncle, the car of the deceased moving from Delhi

to Noida, the evidence of the first respondent (R1W1) to the opposite effect finds corroboration from the corresponding police record, as affirmed on oath before the tribunal by CW1, the investigating police officer. The site plan (Ex.PW-1/E) which was prepared immediately after the arrival of the police at the scene of collision, reveals clearly that the qualis car was moving from West to East, which would mean it was proceeding from Delhi to Greater Noida, while the other vehicle driven by the deceased was moving in the opposite direction which would indicate that he was heading towards Delhi from Noida, rather than journey in the opposite direction, as was claimed in the case of the appellants. The evidence of the investigating police officer (CW1) clearly brought out that one part of the carriageway, *i.e.*, one meant for the direction taken by the deceased was not open to use by the motorists at such relevant time, it having been closed, the traffic in both directions thus having been diverted to one lane only wherein both the vehicles would come face to face, the lane actually being the one meant for movement of traffic of which the first respondent was a part. The accident occurred in broad day light in the afternoon hours. There is no case made out of any poor visibility.

6. In these circumstances, it was incumbent on both the drivers to be watchful for the safety and welfare of other road users, particularly when the traffic in both directions was constrained to move in the same carriageway. Thus, the finding that the deceased was equally responsible for the collision is correct.

7. No other ground was raised or pressed at the hearing.
8. The appeal is, therefore, dismissed.

R.K.GAUBA, J.

DECEMBER 18, 2017

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