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

Date of Decision: January 30, 2017

+ **MAC.APP. 279/2009**

UOI & ANR.

....Appellants

Through: Dr. Ashwani Bhardwaj, Advocate

versus

AMARDEEP KAUR & ORS.

.....Respondents

Through: Mr. Vivek Sharma and Mr.
Nishant, Advocates for
respondents No.1 & 2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned Award of 9th July, 2008 grants compensation of ₹10,50,000/- with interest at 7.5% *per annum* to respondents-claimants on account of death of one *Harjit Singh* aged about 49 years in a road accident on 14th November, 2006. The facts of this case are already noted in the impugned Award and so, need no reproduction. Suffice to note that *Harjit Singh* was driving a two-wheeler scooter and was purportedly hit from behind by Balero Jeep, which is owned by appellant. The injuries suffered by scooterist in the accident in question proved fatal. The deceased in a private employment was earning ₹19,100/- per month and is survived by his wife and son. While relying upon evidence of eye-

witness-*Bakhtawar Singh (PW-6)* and the evidence led by the parties, impugned Award has been rendered.

The challenge to impugned Award by learned counsel for appellant-owner of the jeep in question, is on the ground that eye-witness (*PW-6*) has been planted and that the scooterist had lost balance and had fallen on the road which led to sudden application of the brakes by the jeep driver, but despite abundant caution, the accident could not be averted and it was deceased, who was responsible for the accident in question and not appellants' jeep driver.

During the course of hearing, it was pointed out by learned counsel for appellant-owner that as per FSL report (*Ex.R2W4/1*), there was no damage to the rear side of the scooter and had appellant's jeep collided with the scooter, there would have been dent or transfer of paint but it is not so and thus, it is submitted that no negligence is attributable to appellants' jeep driver. The impugned Award is assailed by learned counsel for appellant-owner is on the ground of negligence alone and rightly so, because the quantum of compensation awarded appears to be just and reasonable.

Learned counsel for respondents-claimants supports impugned Award and submits that in the face of evidence of eye-witness, learned Tribunal has rightly held that the negligence is of jeep driver and so, there is no substance in this appeal.

Upon hearing and on perusal of impugned Award and the evidence on record, I do find that the eye-witness (*PW-6*) had surfaced after about six months of the accident and that too, after reading the Distress Public

Notice (*Ex.PW6/R-1*) in regional newspaper-Rashtriya Sahara. It is highly unlikely that any person would pay heed to such a Public Notice after six months of the accident and would come forward to depose as an eye-witness. It has come in evidence that alleged eyewitness- *Bakhtawar Singh* had gone away from the place of accident because a passerby lady had taken deceased to the hospital. The best evidence would have been of that lady.

Be that as it may.

Apart from the deposition of eye-witness (*PW-6*), there is inspection report of both the vehicles in question as well as Crime Scene Report (*Ex.R2W4/1*). Though there is no damage to backside of the scooter in question, but in view of site plan of the spot, I find that there were skid marks of the jeep in question on the road, which clearly indicates that jeep was travelling at a much higher speed than 30-40 KMs per hour as deposed by jeep's driver. In the face of the site plan of the spot (*Ex.PW5/4*), it cannot be said that negligence was of the scooter driver. Had there been no skid marks, then perhaps such a plea of there being no negligence on the part of jeep driver could have been raised but in the face site plan of spot, appellants' version cannot be accepted.

In the light of the aforesaid, I find no ground to interfere with the impugned Award and as such, this appeal is dismissed. Vide interim order of 27th May, 2009, appellant was directed to deposit the entire awarded amount with interest and out of it, ₹50,000/- each was directed to be released to both respondents-claimants and rest of amount was directed to be kept in a FDR.

Learned counsel for appellant-insurer submits that the order of 27th May, 2009 was complied with by appellant. If it is so done, then awarded amount with interest minus the amount already released in terms of order of 27th May, 2009 be transmitted directly into the bank accounts of respondents-claimants.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 30, 2017

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