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

Decided on: 24th July, 2017

+ MAC.APP. 358/2016 and CM APPL.15370/2016 (stay)

ROHIT KUMAR

..... Appellant

Through: Mr. Amiet Andley, Advocate
with Mr. Arun K. Sharma, Adv.

versus

RACHNA SINGH & ANR.

..... Respondents

Through: Ms. Udit Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The motor vehicle accident referring to which the first respondent herein pressed a claim for compensation before the Motor Accident Claims Tribunal (the tribunal) was subject-matter of FIR No.197/2012 of Police Station Darya Ganj. The investigating police officer of the said FIR had submitted the Detailed Accident Report (DAR) before the tribunal on 28.02.2013. In compliance apparently of the dictum of this court in *Rajesh Tyagi v. Jaibir Singh & Ors.* (FAO No.842/2003 decided on 08.06.2009), the investigating police officer had also taken along with him the driver and owner of the motor vehicle described in the proceedings as the offending vehicle, it being scooty bearing registration No.DL-3CBM-5231 (hereinafter referred to as “the scooty”). The owner of the scooty is the appellant before this court. Concededly, he was present before the tribunal on

28.02.2013 when the DAR was presented. The tribunal adjourned the matter “*for filing reply to the DAR/WS*”. Concededly, no reply to the DAR was submitted by the appellant at any stage. The matter seems to have thereafter been adjourned from time to time, the DAR having been treated as the claim petition (registered as Suit No.118/2013). The case, pertinent to note, was taken to the stage of petitioners’ evidence in the course of which the first respondent (the claimant) had appeared as PW-1 on 01.03.2014. Noticeably, the appellant had stopped appearing and had been set *ex parte* in the meanwhile. By order dated 28.03.2014, the case stood adjourned for the petitioner’s evidence to 16.04.2014. During the interregnum, the claimants filed an application under Section 166 and 140 of the Motor Vehicles Act, 1988 seeking grant of compensation. It is the proceedings conducted thereafter which led to the judgment being passed, *ex parte*, against the appellant, by the tribunal on 27.08.2014 holding him liable to pay the compensation which was assessed in the sum of Rs.6,21,503/- with interest @ 7.5% per annum.

2. It may be added that after the case had been listed for orders, the tribunal realized that issues had not been framed. Issues were framed on 27.08.2014, the very date the judgment in question was announced.

3. The appellant filed the present appeal, *inter alia*, contending that during the earlier proceedings, he had entered into a settlement with the claimant she having agreed to receive an amount of Rs.1,50,000/- for satisfaction of her claim and that pursuant to the said

settlement, she had even received, by various installments, an amount of Rs.1,30,000/-, the grievance emanating from the fact that higher compensation was awarded which, in the submission of the appellant, was behind his back, no notice having been issued or served on the claim petition.

4. The procedure adopted by the tribunal, as seen from the record produced, leaves much to be desired. The judgment was passed, not on the DAR, but on the claim petition under Section 166 of the Act which had been presented only on 04.04.2014, more than one year after the occurrence. The proceedings recorded by the tribunal do not even take note of the said claim petition, leave alone issuing a notice there upon for show cause to the opposite party. The procedure commended in *Rajesh Taygi* (supra) essentially relates to claims pressed through DAR. Once the victim comes up with his own claim petition under Section 166 of the Act, such proceedings supersede the proceedings arising out of DAR. No notice having been issued on the claim petition, the impugned award stands vitiated.

5. The learned counsel for the claimant fairly conceded that in view of the above nature of record, the appellant stands deprived of effective opportunity to contest. Therefore, with the consent of both sides, the impugned judgment is set aside and the matter is remanded back to the tribunal for further proceedings in accordance with law.

6. The parties shall remain present before the tribunal on 08.08.2017.

7. Needless to add, the amount paid pursuant to the settlement, if any, by the appellant shall have to be suitably adjusted against the award, if it is passed after conclusion of the inquiry in terms of the above directions.

8. The amount of Rs.1,00,000/- deposited by the appellant with the tribunal in terms of order dated 02.05.2016, shall be retained by it (the tribunal) in fixed deposit receipt that would have been taken out, for being utilized to satisfy the award, if passed, on the conclusion of the inquiry.

9. Statutory deposit shall be present refunded to the appellant.

10. The appeal is disposed of in above terms.

JULY 24, 2017

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R.K.GAUBA, J.