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

*Decided on : 11 July, 2017*

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MAC.APP. 1083/2013 and CM No.18802/2013

SHIVAJI SHAH

..... Appellant

Through: Mr. Chandra Shekhar Suman,  
Advocate

Versus

RAMDHARI & ANR

..... Respondents

Through: Ms. Vriti Jindal and Mr.  
Amandeep Kaur, Advocates for R-1  
Mr. K.K. Dubey, Adv. for R-2

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. On 13.02.2010, at about 12.45 p.m. the first respondent was peddling his cycle rickshaw carrying certain cargo, proceeding towards Jahangirpuri from Vijay Vihar. When he had reached outer Ring Road, bypass flyover on G.T. Karnal Road, his cycle rickshaw was hit from behind, as a result of which he fell from the flyover to the ground below and suffered injuries. The first information report (FIR) no.38/2010 was registered in police station Mahendra Park for offences under Sections 279, 337 of the Indian Penal Code, 1860 (IPC) on the statement of the first respondent. In the FIR, it was mentioned that the vehicle which had caused the accident was a car bearing

registration no.DL-3CAG-8592 (car) which was driven by Shivaji Shah son of Sh. Jai Pal Singh (the appellant herein).

2. The first respondent instituted accident claim case (MACT no.1029/10) on 30.04.2010 seeking compensation under Section 166 of the Motor Vehicles Act, 1988. He impleaded the appellant and the registered owner of the car (second respondent herein) as the respondents. The claim case was contested by the appellant, he filing a written statement denying his involvement, pleading false implication.

3. The Tribunal held inquiry and, by judgment dated 14.05.2013 upheld the case of the claimant awarding compensation in the sum of Rs.5,23,266/- and directing that the appellant and second respondent would be jointly and severally liable to pay the same. It appears that there was no contention raised either by the appellant, or by the second respondent, that the vehicle was covered by any third party insurance policy and therefore, no insurance company was impleaded.

4. The appellant, by the present appeal, has questioned the finding on facts returned by the Tribunal holding the appellant liable for the accident, his plea being of false implication. He relies on the judgment of the court of Additional Chief Metropolitan Magistrate (North) in the corresponding criminal case arising out of the above mentioned FIR wherein he stood trial on the charge for offences under Sections 279 and 338 IPC. By the judgment of the said criminal court dated 03.05.2016 certified copy whereof has been submitted, the appellant stood

acquitted as the prosecution had examined only a police official, the complainant being reportedly not traceable.

5. The result of the criminal case cannot regulate the fate of accident claim case for the simple reason the tests in both are different. Even otherwise, as noted above, the claimant was never produced as a witness and, therefore, the veracity of his version never came to be tested in those proceedings before the criminal court.

6. It is noted that, in the present proceedings, the claimant appeared as PW-1 on the strength of his affidavit (Ex. PW1/A). He was cross-examined on the said affidavit but nothing substantial came on record. Reliance was also placed on the corresponding record of the criminal case, the FIR itself indicating that the car was found in accidental state close to the cargo and upturned cycle rickshaw which the claimant was peddling at the time of the accident. The photographs of the scene, as taken at the time of the police proceedings, have also been relied upon. They clearly indicate collision between the car and the cycle rickshaw. Even the registration number plate in the front of the car shows it have got loosened due to the impact. This lends credence to the version of the claimant in the witness box. Pertinent to note that the appellant, despite opportunity, did not offer his own evidence. He was the best person to testify facts if they were contrary to what was being presented by the claimant. His disinclination to enter the witness box must lead to adverse inference.

7. In the overall facts and circumstances, the conclusion reached by the Tribunal cannot be faulted. The appeal is dismissed.

8. The appellant and the second respondent must discharge their responsibility in terms of the award by paying the compensation through the Tribunal, without any further delay.

9. With these observations, the appeal and the pending application are disposed of.

10. The statutory amount shall be made over to the Tribunal for being paid to the claimant but will have to be adjusted against the amount to be recovered and disbursed.

**R.K.GAUBA, J.**

**JULY 11, 2017**

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