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

Decided on: 26th September, 2017

+ **MAC APPEAL No.831/2010**

JASPAL SINGH

..... Appellant

Through: None.

versus

GEETA DEVI & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Shailender Tanti @ Shailender Prashad indisputably suffered injuries in a motor vehicular accident that occurred at about 10.00 a.m. on 23.07.2007 and died in the consequence. The accident claim case (suit no 369/2007) instituted on 27.11.2007 by his wife and other members of the family dependent on him, they being first to fifth respondents (collectively, the claimants), sought compensation under Section 166 of Motor Vehicles Act, 1988, on the averments that the accident had been caused due to negligent driving of Tata Indica car bearing registration no. DL 1Y 8866 (the car) by the appellant, he having been impleaded in the said case as first respondent, in addition to other parties, they being described as the registered owner and insurer, shown in the array before the tribunal as second and third

respondents. It may be added here that it came to be admitted before the tribunal during the inquiry that there was no insurance policy taken out in respect of the car for the relevant period, this fact having been mentioned in (para 5 of) the judgment dated 05.06.2010 by which the claim was decided holding the appellant and the owner of the car (Ruchi Solanki) liable to pay compensation to the claimants, jointly and severally, in the total sum of Rs. 4,71,000/-. It may further be added here that in (para 12 of) the judgment of the tribunal, it came to be erroneously recorded that the compensation was to be paid by the insurance company, such error having later been corrected in terms of subsequent order dated 17.07.2010.

2. The appellant felt aggrieved with the above-mentioned finding returned by the tribunal holding him responsible for the accident and came up with the appeal at hand contending that the accident had involved negligent driving of motorcycle bearing registration no. DL 6SAA 2626 (the motorcycle) driven by one Abhishek Sachdeva (sixth respondent in appeal) and that the conclusions reached by the tribunal against him are erroneous.

3. The appeal was admitted and directed to be put in the list of 'regular matters' as per order dated 5th September, 2012. When taken up for hearing there is no appearance on either side.

4. The record of the tribunal has been perused and the contentions raised in the appeal have been considered.

5. It is noted that during the inquiry before the tribunal, the claimants had relied upon the evidence particularly of Rinku Bahadur (PW-2) and Abhishek (PW-3) to bring home the involvement of the

car and the negligence on the part of the appellant as its driver. The appellant had also appeared as a witness (R1W1) testifying on the strength of his affidavit (Ex.R1W1/A). It may also be mentioned here that the tribunal's record reveals that the appellant had moved an application before the tribunal invoking Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking impleadment of Abhishek Sachdeva (sixth respondent in appeal) as a party respondent to the claim petition. The said application, however, was dismissed by the tribunal by order dated 15.07.2009, the claimants having opposed the same, insisting on proving their contention that the fatal accident had occurred due to negligence on the part of car driver. The appellant had challenged the said order dismissing his application under Order 1 Rule 10 CPC by a petition - CM (M) 1112/2009 - before this Court. The record shows, as is also confirmed by the pleadings in the appeal, that the said petition assailing the dismissal of the application for impleadment of Abhishek Sachdeva as a party respondent was withdrawn by the appellant and dismissed accordingly on 13th April, 2010.

6. Thus, it is clear Abhishek Sachdeva (sixth respondent) shown in the array of parties in the appeal at hand was not a party to the claim petition before the tribunal leading to the judgment from which the present appeal arises. On the contrary, the claimants had relied on his evidence having appeared as witness (PW-3) on their behalf. In this view, the issue as to whether there was negligence on the part of sixth respondent was not the core issue to be addressed by the tribunal. Instead, the fate of the claim petition hinged on the decision on the

issue as to whether the claimants' evidence showed negligence on the part of the appellant, he admittedly being the driver of the car.

7. The evidence of Rinku Bahadur (PW-2), a water vendor present at the scene, is to be read alongside the version of Abhishek (PW-3) and the sequence of events narrated by the appellant, he having appeared as his own witness (R1W1). The testimony of all the three, read together, clearly brought out that the deceased was in the process of crossing road when he was hit by the motorcycle and, as a consequence, he fell down and came under the wheels of the car which had dragged him for quite a distance. Though the appellant, in his testimony (as R1W1), would claim that being a responsible citizen he had stopped the car in the middle of the road so as to "give cover" to the deceased and the motorcyclist who were lying on the road and that he had later rendered help, the evidence of PW-2 confirming that the car had also come to be involved and that it had dragged the deceased for a distance has gone unchallenged.

8. The very fact that the car had also hit the deceased and had dragged him for quite a distance reflects that it was moving at an uncontrollable speed. In this view of the matter, the finding returned by the tribunal holding the appellant negligent cannot be faulted.

9. Even if one were to assume that the first impact being by the motorcyclist, there was negligence on the part of said other person, it would turn out to be a case of composite negligence. In the context of a claim of a third party, this fact cannot come to the aid of the appellant, in the given facts and circumstances his negligence also having been brought home.

10. The appeal is devoid of substance and is dismissed.
11. The claimants are at liberty to enforce the award by appropriate proceedings before the tribunal.

R.K.GAUBA, J.

SEPTEMBER 26, 2017

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