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

Decided on: 2nd November, 2017

+ **MAC APPEAL No. 1090/2016**

VANDANA SHARMA

..... Appellant

Through: Mr. Vishal Sharma, Mr. Anish
Shreshtha, Mr. Sagar Mukherjee
& Mr. Nishchal Joshi, Advs.

versus

SARVA PRIYA PARASHAR

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appeal is directed against the judgment dated 06.08.2016 of the Tribunal whereby the claim petition (petition no. 194/2014) of the appellant was dismissed.

2. The appellant claims to have suffered injuries in a motor vehicular accident that occurred on 02.02.2014 at about 7.30 p.m. near Qutub Minar Metro Station, Mehrauli, New Delhi on Gurgaon-Mehrauli Road. As per her case, she was hit by motorcycle bearing registration no. DL 1SN 6065 driven in a rash or negligent manner by the respondent. The police had registered a criminal case vide first information report (FIR) No. 170/2014 at Police Station Mehrauli, for investigation into offences allegedly committed under Sections

279/337 of Indian Penal Code, 1860 (IPC). The investigating police officer submitted a detailed accident report (DAR) before the motor accident claims tribunal of South District on 19.03.2014. Alongside the said submission of DAR, the respondent was also produced in person, the appellant having appeared through counsel. The tribunal adjourned the matter awaiting the result of efforts for amicable settlement.

3. On 27.03.2014, to which the matter was adjourned, no effective proceedings could take place as the appellant was absent. The matter was adjourned to 29.04.2014 when the counsel for the appellant was present besides the respondents appearing in person. The tribunal adjourned the matter to 26.05.2014 requiring written statement to be filed by the respondents. The proceedings recorded on 26.05.2014 are mostly illegible, though giving the impression that copy of the petition was supplied. From this, it is assumed that the appellant had filed the formal application under Section 166 of Motor Vehicles Act, 1988, such application being available on record of the Tribunal (pages 53-65), it bearing the date 26.05.2014, supported by a affidavit sworn on the said date. The matter was adjourned for filing written statement on 14.07.2014.

4. On 14.07.2014, the Tribunal noted, *inter alia* that “WS (was) not filed by the respondents despite opportunity” and having recorded this, proceeded to strike off the defence of the respondents.

5. Thereafter, issues were framed and the matter was adjourned for claimant’s evidence. The claimant examined herself (as PW-1) on the

strength of her affidavit (Ex.PW-1/A) on 29.08.2014. She then examined two more witnesses on 30.10.2014, such further evidence relating to her medical examination and treatment. She closed her evidence on 08.01.2015.

6. The matter was adjourned on several dates thereafter for various reasons including the non-availability of the presiding officer of the Tribunal. On 22.12.2015, the Tribunal closed the opportunity for the respondents to lead evidence observing that “enough opportunities” had already been given. It may be mentioned here that on all the preceding dates there was no occasion or opportunity for the respondent to actually lead any evidence. Be that as it may, it may further be added that on subsequent dates, the petitioner sought opportunity to lead additional evidence but then did not produce any further witness. The petition was dismissed by judgment dated 06.08.2016, the prime reasons set out in the judgment being as under:-

“To prove rash and negligent on the part of the driver, petitioner examined herself as PW-1 and filed her affidavit and deposed stating that on 02.02.2014 at about 7.30 p.m., she was coming back from parental home to in-laws house and when she reached at Qutub Minar Metro Station Bus Stand and when was about to cross the road towards Qutub Minar Metro Station on foot, in the meantime a motor cycle bearing No. DL 1SN 6065 (Black Yamaha Fazer) came from Gurgaon Side in a rash and negligent manner by its driver and hit the deponent with great force and due to this forceful impact, she fell down on the road and sustained multiple grievous injuries on whole over body of the deponent and also received a head injuries and leg. The witness was cross-examined by Respondent wherein the defence was raised that the accident took place due to the

mistake of the injured as she was not crossing the road from Zebra crossing.

I have heard the arguments and have perused the record. It is an admitted position from the site plan that at the place of the accident there was no zebra crossing. It is also an admitted position that the accident has taken place while the injured was crossing the road. From the testimony of PW-1 it cannot be made out as to whether the accident due to the fault of respondent or the petitioner herself. Needless to say that it is the duty of pedestrians to be cautious while crossing the road and they should see the condition of traffic before coming on the road. The victim was along with her sister and the possibility that both of them would have been talking while crossing the road or coming on the road from footpath cannot be ruled out. It is also pertinent to mention here that the accident has taken place just close to the Qutub Minar Metro Station Bus Stand and it is quite possible that the victim would have stepped on the road to cross the road without noticing the traffic on the road and the respondent would not have been able to apprehend such situation that someone would come on the road from the bus stand and accident took place. It is an admitted position that respondent was going straight on the road on the motorcycle and if someone comes on the road without noticing the traffic, then the motorcycle driver cannot be held liable for negligence as no evidence has come on record as to how he was negligent, merely by using the expression that the vehicle was driven rashly and negligently, does not serve the purpose and it is not sufficient to hold anyone negligent on its own unless some evidence comes with respect to manner of driving. Hence, this issue stands decided against petitioner.”

7. To say the least, the approach of the Tribunal to the inquiry leaves much to be desired. The respondent actually did not have any effective opportunity to represent his side of story. Though he has been insisting on appearing in person at the hearing on the appeal, he

submitted that his request for legal aid was declined orally. There was no occasion for his defence to be struck off as it was wrong to assume that enough opportunities had been given for the purpose. The adjournments were all along for reasons attributable to the appellant herself. Even the right to lead evidence by the respondents was short-shrived.

8. But then, the question also is as to whether the Tribunal has appreciated the evidence of the claimant properly or not. It is not clear as to from where the Tribunal assumed that the appellant was accompanied by her sister and that they would have been talking to each other and, therefore, she was negligent while crossing the road from one side to the other of a busy road. The Tribunal seems to have gone more by assumptions and conjectures than material on record which is most inappropriate, unjust and unfair.

9. Against the above backdrop, during the hearing, the appellant's counsel submitted that the claim case may be remitted to the Tribunal for further inquiry as the appellant would like to lead further evidence. Having regard to the slipshod manner in which the claim case has been proceeded with by the Tribunal, this request appears to be just and proper.

10. Thus, the appeal is allowed. The impugned judgment is set aside. The claim case is remitted to the tribunal for further inquiry. Before proceeding further, the Tribunal shall examine if the respondent is entitled to services of the legal aid counsel and, if so, make appropriate arrangements in such regard. If the respondent is not

entitled to legal aid at State expense, he shall be given proper opportunity to engage counsel on his own and to file a formal reply to the claim petition. Needless to add, the tribunal shall begin the further proceedings from the stage of pleadings thereafter giving opportunity to both sides to lead evidence.

11. The parties are directed to appear before the tribunal on 1st December, 2017.

12. The appeal is disposed of in above terms.

NOVEMBER 02, 2017
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R.K.GAUBA, J.



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