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

% *Decided on: 28.11.2019*

+ CM(M) 135/2018 & CM APPL. 4369/2018

DEBASIS MISRA

..... Petitioner

Through: Petitioner in person.

versus

AMINUR BIBI & ORS

..... Respondents

Through: Mr. Brijesh Bagga and Mr. Mohit Ahuja, Advocate for R-1.
S.I. Anuj Singh Kadian, P.S. Hazrat Nizamuddin.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. It is the petitioner's contention that there is contradiction in the statements of the widow of the deceased, Ms. Aminur Bibi, to the extent that in her affidavit, she had stated that she had one son and one daughter, whereas in her cross-examination, she stated that she has two sons and two daughters and one of the daughters, namely, Ms. Merina Khatoon was married. She also stated that she was not aware of the contents of the affidavit.

2. The claimant had produced an eyewitness, namely, Mohd. Khalil, PW-2. He is the person who was named in the FIR as well as in the claimant's list of witnesses. In evidence by way of affidavit (at page 114 of

the claim petition) the accident occurred on 18.11.2016 but actually the accident is stated to have occurred on 23.07.2016.

3. The other evidence, by way of affidavits, led by the petitioner was of one Mr. Ram Raj Patel, the mechanic who repaired his vehicle and one Mr. Nabab Hussain. The latter's affidavit, reads, *inter alia*, as under:

“.....

The car driver applied the break as the car was in slow speed but the person was hit in front of the car and turned towards the car as his head hit the front glass of the car towards the driver seat and the said person fell in the right hand margin on the road. The car was reversed immediately and the person was put on the back seat with the help of the other persons and was taken to the Moolchand hospital by the car owner.....”

4. The petitioner contends that this evidence by way of affidavit was on record, however, since the said eye witness was not present before the learned Tribunal on the said dates, the petitioner's evidence was closed. He states that he is a legal practitioner. On the said date, since he was not able to be present before the learned Tribunal to pursue his case to record evidence to substantiate his case, he had engaged the services of his colleague. But since the witnesses could not appear before the Court on the said dates, a request was made by his proxy counsel seeking one more date so that the said two witnesses could be brought to the Court for recording of evidence. But the time was not extended and instead evidence was closed. The petitioner submits that as a legal practitioner, he would want an early closure of this case.

5. The record bears out that the evidence of Mr. Nabab Hussain and Mr. Ram Raj Patel had been filed by way of affidavits by the petitioner and the non-appearance of the said two eyewitnesses on the said dates cannot be unnecessarily held against him. In fairness, the said eyewitnesses would have to be summoned before the learned Tribunal for cross-examination. It appears that this opportunity was not granted to them.

6. The learned counsel for the claimant submits that he has no objection if such permission is granted because, in all fairness, each party should be granted adequate opportunity to lead evidence. The accident happened on 23.07.2016. The petitioner has stated in para 3.2 of the claim petition as under:

“3.2 That on 23.07.2016 which was a Saturday, the Petitioner after finishing his Court work was returning to his residence with his registered Clerk Mr. K.K. Jha at about 6 P.M. and when he reached the front portion of Oberoi Hotel he found a person standing on the road divider and as soon as the Car approached near him he suddenly came in front of the car and also tried to return back. Since the car was in low speed approaching the flyover with the application of sudden break even if the car came to a halt but the person was hit in front of it who turned towards the driver seat of the car his head hitting the glass and he fell to the right hand margin. There was no situation for the petitioner to save the person. The Petitioner immediately with the help of others put the injured inside the back seat of the car and with the broken front glass drove to the nearest Mulchand Hospital where he was admitted and subsequently police was informed who came to the said hospital and ask the petitioner to drive the car to the Nizamuddin Police Station which was driven with much difficulty and was surrendered there.”

7. The petitioner seeks to establish his case on the basis of crucial evidence of the two eyewitnesses mentioned hereinabove i.e. Mr. Nabab Hussian and Mr. Ram Raj Patel.

8. The petitioner was unable to bring the two said eyewitnesses to the learned Tribunal on the said dates because of his being engaged as a counsel outside the city. He was duly represented by a proxy counsel before the learned Tribunal. Therefore, it would be in the fairness of things that the petitioner is granted one more opportunity to lead evidence. In view of the above, the order dated 19.12.2017 is set aside and the petitioner is permitted to lead evidence. The case is remanded to the learned Tribunal.

9. At the specific request of the petitioner, the date to appear before the learned Tribunal is fixed on 18.01.2020. The parties shall appear before the learned Tribunal on the said date for further proceedings. The learned counsel for the parties submit that since the matter is almost two and a half years old, they shall endeavour to assist the learned Tribunal to dispose-off the case at the earliest possible without seeking any adjournments. It is the contention of both the parties that all their applications pending before the learned Tribunal may be disposed-off at the earliest. The Court is confident that their request would be duly considered by the learned Tribunal.

10. The petition is disposed-off in terms of the above.

NAJMI WAZIRI, J

NOVEMBER 28, 2019

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