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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 09.12.2019

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MAC.APP. 708/2019

RENU

..... Appellant

Through: Mr. K.P. Singh and Mr. B.K. Singh,
Advocates.

versus

MOHAN SINGH (DRIVER) & ORS

..... Respondents

Through: Ms. Aakankha Bansal, Advocate for
Mr. Devender Kejriwal, Advocate for
R-1 & R-2 (Mob. 9953336109).
Mr. J.P.N. Shahi, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 35052/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed-off.

CM APPL. 35051/2019 (delay in filing) & CM APPL. 35053/2019 (delay in re-filing)

3. For the reasons mentioned in the application, the delay in filing and re-filing of the appeal is condoned.
4. The applications stand disposed-off.

MAC.APP. 708/2019

5. The learned counsel named above enters appearance on behalf of respondent nos. 1 and 2.

6. At joint request, the case is being taken up for disposal.

7. The appellant impugns the award of compensation dated 24.11.2018 passed by the learned MACT in MACP No. 41/18, on the ground that it has erred on the face of the record. PW-2, Dharam Veer, was presented by the appellant/ claimant as an eye-witness. He was the person at whose instance the FIR was registered. He had seen the manner of the accident and had deposed accordingly. However, the learned Tribunal disbelieved his testimony on the sole ground that he did not intimate the police of the occurrence of the motor accident. It is argued that the said finding is erroneous.

8. It is not in dispute that the FIR was registered on the statement of PW-2. As an eye witness, he had testified that the fatal accident was caused on account of rash and negligent driving of a truck (tanker). His testimony could not possibly be taken lightly, especially because he was the person who intimated the police and on his statement the FIR was registered. Criminal proceedings were initiated against the said driver and chargesheet has been filed. This by itself would be sufficient to prove that Dharam Veer was the best witness to the accident. A minor discrepancy apropos which motor-vehicle he was riding would hardly make a difference to his testimony that his friends, namely Yogesh and Lucky had died in the unfortunate accident. In his affidavit in evidence, he had deposed, *inter alia*, as under:-

“ 2. That on the fateful day i.e. 16.02.2017 my Mausi’s son Yogesh s/o Sh. Ranbir Singh R/o Basai, Arela, and his friend Lucky s/o Sh. Jai Singh R/o Karawal Nagar,

Delhi was coming towards Agra from my motorcycle vide registration No. UP-80-DR-4162 (Pulsar). Yogesh was driving my motorcycle. I alongwith Yogesh and Lucky were coming from the village Gunwali to leave Yogesh's Aunty (Bua) in the village Gunwali. When we reached near village Nayapura, at about 5:00 P.M. on 16.02.2017, a tanker No. UP-83-AT-9307 driven in a rash and negligent manner and in very high speed by Sh. Mohan Singh heavily hit/struck the motorcycle of the deceased, whereby my Mausi's son Yogesh and his friend Lucky received serious and grievous injuries all over their body and both the injured Yogesh and Lucky dead on the spot. My motorcycle was also damaged in the said accident. Both injured was brought to the hospital where doctors declared dead them in the hospital and his post-mortem was got conducted at District Agra, Uttar Pradesh.

3. That the deponent is the eye-witnessed in the said case and the deponent had lodged the complaint and consequently an FIR No. 83/2017, dated 16.02.2017, U/S 279/304-A/427 IPC was registered with P.S. Fatehabad, District-Agra, Uttar Pradesh.

4. That the offending vehicle i.e. Tanker No.UP-83-AT-9307, was driven by Sh. Mohan Singh in a very rash and negligent manner and due to his fault and negligent manner and due to his fault the accident occurred which resulted in death of petitioners' son and Yogesh."

9. In the cross-examination by the insurance company, his deposition reads as under:-

"XXXX by Sh. Rajat Tripathi, Ld. Counsel for insurance company.

It is correct that the content of my affidavit Ex. PW2/A has been read over to me in vernacular and has been prepared on my instance. The distance of my residence was about 25 km from the place of accident. I was coming from another motorcycle of Yogesh (controverted with affidavit where it is not so written) and my motorcycle was driven by Yogesh. The road has two lanes without divider. I was almost 150 mtrs behind the victim. The persons who were going on motorcycle were not wearing helmets. The deceased/Yogesh was my cousin. I am not aware whether Yogesh has driving licence or not. I do not know who called the police. I did not call the police. I have not taken the deceased to the hospital. The accident was face to face collided and conductor side of the truck hit the motorcycle. It is wrong to suggest that no accident was caused by any track to the deceased or that nor I was present at the spot or that I am interest witness or that I am deposing falsely to help the petitioner to getting the compensation. It is wrong to suggest that accident was caused due to the negligence of deceased Yogesh as he was coming wrong side.”

10. The message of the deposition is unmistakable i.e. that Yogesh was driving Dharambir's motor-vehicle on which Lucky was sitting as pillion, and that Dharambir alongwith Yogesh and Lucky were coming from Village Gunwali. It does not mean that all three i.e. Dharambir, Yogesh and Lucky were riding on the same motor vehicle.

11. The first line of para 2 of the affidavit clearly states that on the fateful day of the accident, Yogesh and Lucky were coming towards Agra, i.e. going from Village Gunwati to Agra, that they were on Dharambir's motor-vehicle and Yogesh was riding the motorcycle. The deposition does not convey that Dharambir also was on the same motor-vehicle. Indeed he clarified the same in his deposition that *‘I was coming from (sic) another motor-vehicle and Yogesh and Lucky were on the other motor-vehicle.’* So,

Yogesh and Lucky were on one vehicle while the deponent Dharambir was on another. The same cannot be construed as any form of contradiction in affidavit.

12. The claimant has clearly led evidence to prove that fatalities have been caused on account of rash and negligent driving of the offending vehicle. In the circumstances, the case is made out for awarding of compensation under section 166 of the Motor Vehicles Act, 1988. The case is, accordingly, remanded to the learned Tribunal for computation of compensation.

13. Since the accident happened on 16.02.2017 i.e. almost 2½ years ago, the Court would request the learned Tribunal to endeavour to dispose-off the claim petition preferably within a period of four months from the date when the case is next listed before it. The learned counsel for the parties assure the Court that they shall assist the learned Tribunal on every date when the cases are so listed and shall not seek any adjournment.

14. The parties shall appear before the learned Tribunal on 19.12.2019.

15. Let the LCR be returned.

16. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

DECEMBER 09, 2019

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