$~24, 25 & 28

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

% *Decided on: 13.09.2019*

\+ MAC.APP. 780/2019, CM APPL. 40843/2019, CM APPL. 40844/2019, CM APPL. 40845/2019 & CM APPL. 40846/2019
UNITED INDIA INSURANCE CO LTD ..... Appellant

versus

KHEM KARAN & ORS ..... Respondents

\+ MAC.APP. 781/2019, CM APPL. 40855/2019, CM APPL. 40856/2019, CM APPL. 40857/2019 & CM APPL. 40858/2019
UNITED INDIA INSURANCE CO LTD ..... Appellant

versus

BABY AVANI & ORS ..... Respondents

\+ MAC.APP. 784/2019, CM APPL. 40866/2019, CM APPL. 40867/2019, CM APPL. 40868/2019 & CM APPL. 40869/2019
UNITED INDIA INSURANCE CO LTD ..... Appellant

versus

KHEM KARAN & ORS ..... Respondents

Through: Mr. Nikhil Jain and Mr. Satya Prakash, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. These appeals impugn the award of compensation on the ground that there was a doubt apropos the identity of the car. It is argued that when the injured motorcyclist-husband of the deceased had stated to the police that the vehicle which hit him was a white coloured Hyundai Excent, it is strange that the Investigating Officer found the

offending vehicle to be a white coloured Santro car. The issue has been dealt with by the learned MACT as under:

"7. Onus to prove this issue was upon the petitioners. To prove that victim suffered fatal injuries and such injuries was" caused to her on account of rash and negligent driving by respondent no. 1. husband of deceased (PW1) filed his affidavit (Ex. PW1/A) in evidence and reiterated the facts of the DAR petition. It is further matter of record that this witness PW1 has also suffered injuries in the same accident and a separate claim with respect to injuries suffered by him is also pending. This witness has been cross examined by the Ld. Counsels for respondents. However, nothing material has come on record to disbelieve testimony of PW1. Though, respondent no. 1 has examined himself but he has failed to prove that his vehicle was not involved in the present case or that accident has not occurred due to his rash or negligent driving or that the victim was responsible for the accident. Criminal case record filed on recored shows that respondent no. 1 was indicted by police for offences punishable under Section 279/337/304A IPC. Nothing material is available on record which shows that respondent no. 1 has ever approached to any higher authority or any forum against his implication in this case. Apart from deposition of PWs, the fact that victim suffered fatal injuries in the accident is also supported from postmortem report of victim. However, Ld. counsel for the Ins. Co. has taken the plea in the written statement and argued as well that it is not clear as to on what basis the vehicle was involved in this case as the vehicle, which petitioner / eye witness has mentioned in his statement recorded by the police was santro car while the vehicle involved in the present case is an xcent car. Though, to prove such contention, Ins. Co. has not examined any witness yet I have perused the record on this aspect. As per FIR report, the IO, during the investigation gone through the footage of CCTV recording, as per which two santro cars bearing No. DL11CA 2982 and HR10T 8808

respectively were found to be coming from Bawana side and going towards Dariyapur side, just before the accident. Accordingly, IO has further investigated the matter and inquired from Sh. Puneet Madan, registered owner of vehicle i.e. Sentro No. HR10T 8808 and recorded his statement under Section 161 CrPC and as per his statement on 30.08.2017 he was going to Sonipat from Bawana and at about 12 noon when he reached near Bawana Auchandi Road, while driving his car. He saw that one motorcyclist, who was wearing helmet was going on his motorcycle and one lady was sitting as pillion rider on the motorcycle and when he was about 100-150 meter ahead of the motorcycle, he heard a loud sound and when he saw back side in his vehicle's mirror, he noticed that one taxi, registration number of which started from 6, after hitting the motorcyclist was going very rashly and at a high speed, he tried to chase over that vehicle up to Dariyapur but failed to do so. Thereafter IO has checked the CCTV recording and with the help of LPR Camera, he found that just before the accident, a vehicle i.e. Sentro bearing registration no. DL1ZA 6740 (offending vehicle) was going on at a very high speed towards Dariyapur. Notice was issued to its registered owner, who told that Mr. Manjeet S/o Rajpal was driving the said sentro car on that date, but he did not disclose him about any accident. Said sentro was got inspected mechanically and notice was issued to Manjeet, and upon inquiry who disclosed that on 30.08.2017 he was driving the said sentro and he was going to his village Kundal, Sonipat from Rohini via Bawana at about 12 noon when he reached. Shri Shanior Parvati Gaushala, Dariyapur, Delhi, his vehicle touched a motorcycle due to which, its driver and one lady along with his child, who all were travelling on the motorcycle fell down on road but he ran away from the spot and did not disclose anything about the accident to the owner of Sentro vehicle. The above are the facts of accident, as per the DAR. Now coming to the testimony and cross examination of R1W1. Though, the respondent no. 1 (R1W1) had denied the accident but in his

cross examination, he admitted the fact that criminal case was registered against him and was released on bail. He further, admitted that he has not filed any complaint to any authority against his false implication. It is also admitted that he was driving the car on the date of accident but in Lajpat Nagar area, however he has failed to prove the said fact that he was driving his vehicle in Lajpat Nagar area. No witness has been examined nor any document which may show that he was in Lajpat Nagar area at the time of accident has been filed. Further nothing has been disclosed by him for what purpose he was driving his vehicle in Lajpat Nagar area. Further, on the one hand, he stated in his testimony that he never drive that vehicle but on the other hand he admits that he was driving his vehicle in Lajpat Nagar areas, which shows that he himself is not sure about his presence at that time. Moreover, it is admitted fact that offending vehicle is a taxi which was plying under OLA scheme, therefore there must be GPRS system installed in the offending vehicle and by which respondent no. 1 could have easily proved the location of his vehicle at the time of accident but nothing has been proved by the R1W1 in this regard rather he kept mum on this issue. Further, while cross examining the PW1, a suggestion has been given to him by the respondent no. 1 with respect to the vehicle no. HR10T 8808 (white santro) and owner of this vehicle is Mr. Punit Madan S/o Sh. Pawan Kumar R/o H. No. 116-L, Model Town, Sonipat caused the accident, which was denied by the PW1. It is surprising to give such suggestion particularly when the respondent no. 1 claim that he was not at the spot of accident, at that time. He has not explained as to how he came to came that accident has been caused by the vehicle no. HR10T 8808 and this fact by itself shows that he was very much aware about the accident. Further as far as arguments that it was not a Sentro car or that it was an xcent car is concerned, the court is of the opinion that no adverse inference can be drawn from this aspect as from a person who has suffered Injuries may not be in a very good position to note down the number of the

offending vehicle rather his primary concern would be rather should have been to take care of his family first and then any other fact. The fact that his vehicle had a dent on left hand side is admitted by him, which stands corroborated with mechanical inspection report. Therefore this arguments of respondent no. 1 is not having any much valid force. Further law with respect to rash and negligence in MACT case is not to be proved beyond reasonable doubt rather the matter is to be decided on the basis preponderance of probabilities. In a claim petition before the Motor Accidents Claims Tribunal, the standard of proof is much below than what is required in a criminal ease as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability. Hence, rash and negligence on the part of respondent no. 1 stands proved."

2. What emanates from the preceding discussion is that although the injured stated that the vehicle which hit his motorcycle from the rear side was a white coloured Hyundai Excent motor car, the said statement was made in a state of shock, pain and confusion as he had been thrown-off his motorcycle alongwith his wife and child. The wife died on the spot and the motorcyclist-claimant suffered injuries alongwith his minor daughter. Obviously, he was not in such a state of alertness where he would normally look at the vehicle which caused the accident. In the immediate daze of the accident, the white coloured car may have been mistaken as a Hyundai Excent motor car. Furthermore, in such state of shock, pain and confusion, his first reaction would be to take care of his kith and kin, he may have seen his wife limbless on the road and his daughter being thrown-off, wailing away.

3. The Investigating Officer was able to identify the offending vehicle after scientific examination of the evidence available to him. He reviewed the CCTV recording of the two vehicles which were in the immediate rear of the motorcyclist, one of which was found to be the offending vehicle. He then pursued the investigation with the owner of the vehicle, the latter gave a statement under section 161 Code of Criminal Procedure, 1973. Furthermore, upon mechanical inspection of the vehicle, fresh marks were found on the vehicle which corroborated with that portion from where the accident had been caused. In the cross-examination, the appellant/insurer had put a suggestion that the accident was caused by a white coloured Hyundai Excent car but the same was categorically denied. The owner/driver of the vehicle , Manjeet Rana S/o Sh. Raj Pal Rana, had stated that on the day and at the time of accident he was driving his vehicle in Lajpat Nagar, Delhi. However, he was not able to bring anything on record to prove that he was in that area or for what purpose he was driving in Lajpat Nagar, especially since he is a resident of Village Kundal, Sonepat, Haryana. It has not been shown as to why he would ordinarily be roaming about in Delhi's Lajpat Nagar area. His testimony was rightly found to be not reliable. In view of the above, the Court is not persuaded by the arguments of the appellant.
4. There is no merit in the appeals. The appeals are accordingly dismissed.

NAJMI WAZIRI, J

SEPTEMBER 13, 2019/AB