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

% **Date of Decision : 10.04.2019**

+ **MAC.APP. 756/2018 AND CM APPLS. 34536/2018 & 34539/2018**

JITENDER TOMAR Appellant

Through Mr. S.K. Vashistha, Adv.

versus

SHANKAR LAL & ORS (NATIONAL INSURANCE CO LTD)

..... Respondents

Through Ms. Rakhi Dubey, Adv.

+ **MAC.APP. 773/2018 AND CM APPLS. 35461/2018 & 35463/2018**

VINOD TOMAR @ VIKAS Appellant

Through Mr. S.K. Vashistha, Adv.

versus

SHANKAR LAL & ORS (NATIONAL INSURANCE CO LTD)

..... Respondents

Through Ms. Rakhi Dubey, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. By the instant appeals, the appellants, assail the judgment-award dated 08.12.2017 passed by MACT (Pilot court), Karkardooma Courts, Delhi, whereby, the claim applications made by the appellants, seeking compensation on account of injuries sustained by them in the motor accident

involving car No. DL 7 CH 6589, in short 'the offending vehicle, which undisputedly was insured with the respondent No.3-National Insurance Company Ltd., were dismissed. The claim petitions of the appellants were dismissed with a finding that the appellants had failed to establish that they had sustained injuries on account of rash and negligent driving of the offending vehicle. The observations of the Tribunal in that regard are, as under :

“12. To succeed in the claim petitions and in view of section 166 of the MV Act, it is for the claimants to prove that vehicle which caused the accident was being driven rashly and negligently by its driver. Both the claim petitions has been filed towards compensation for injury to the petitioners caused on 17.10.2015 at Baraut Chhaproli Road, Malakpur, Baghpat UP within the jurisdiction of PS Baraut. The respondent No.1 denied any accident by rash and negligent driving in the written statement. Both the petitioners examined themselves as PW-1 and only criminal case records relied by them i.e. copy of FIR. Petitioner Jitender Tomar during cross examination admitted regarding head on collision alongwith the fact that no MLC or the documents regarding his treatment at Aastha Hospital Baraut UP has been placed on record by him. As further admitted he became unconscious after the accident. Other petitioner Vinod Tomar during cross examination also admitted that no MLC is filed on record and the offending vehicle was coming in the right directions and as the petitioners came out from the gate of the school, the accident was caused. The PW-2 Satish Kumar has been examined as an eyewitness (who is also the maternal uncle of the petitioners as well as their counsel in the matter) but the testimony of the witness was totally shattered during cross examination as he came at the spot after the accident and was disclosed regarding the manner of the accident from the people that the driver was

driving the vehicle in rash and negligent manner. The PW-2 admittedly did not see the accident nor he is aware regarding the DL of the petitioners. The testimony of PW-2 therefore an eyewitness is not sustainable and the testimony of petitioners categorically did not prove the rash and negligent driving by respondent No.1 causing the accident.

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16. From the material on record and from the testimony of the witnesses, it is proved that the driver/respondent No.1 is not responsible for rash and negligent driving. In the case in hand, there is nothing on record to show the negligence of driver/respondent No.1. In fact the petitioners failed to prove any accident causing injury due to the rash and negligent driving of driver/respondent No.1. Therefore, in view of the material on records and testimony of witnesses, this Tribunal is of the considered view that the petitioners have failed to prove that they sustained injury in motor accident caused by rash and negligent driving of vehicle no. DL 7 CH 6589 by defendant No.1 on 17.10.2015 at about 5 PM at Baraut Chhaproli Road, Malakpur, Baghpat, UP. The issue No.1 in both the cases is decided accordingly against the petitioners.”

2. It appears that the Tribunal did not attach much importance to the only depositions of PW1 Vinod Tomar in MACT petition No. 309/2016 and PW1 Jitender Tomar in MACT petition No. 308/2016, who, by themselves, were the eyewitnesses, but, failed to adduce evidence in support of their depositions. Ld. Counsel for the appellants on his part, during the course of hearing, points out that, besides the registration of the FIR, within a month of registration of FIR, the police completed the investigations and the charge-sheet had even come to be presented before the Chief Judicial

Magistrate, Baghpat, on 25.11.2015. Copy of such charge-sheet is forming part of the appeal paper book. In his submissions, the filing of the charge-sheet, by itself, supports the genuineness of the FIR and the depositions, that came to be made. In his submissions, the appellant could not adduce such evidence on record on account of laxity attributable to the previous counsel conducting the proceedings before the Tribunal.

3. Ms. Dubey, Id. Counsel for the respondent-the insurer, on her part, however, strenuously contends that the bald assertion of any laxity attributable to the pervious counsel, cannot be a reason to see any error or perversity in the findings arrived at by the Tribunal. In her submissions, Ms. Dubey, Id. Counsel for the respondent-the insurer, the appellants had availed sufficient opportunities and their failure to prove the relevant material on record, cannot be ignored.

4. Having given thoughtful consideration to the respective pleas of the parties, this Court, keeping in view that the objectives of beneficial legislation, which provides for the compensation to the victims of the motor accident, and, the fact, that the police on investigations, have found the involvement of the offending vehicle and its being driven rashly and negligently, that, as a consequence thereof, the appellants sustained injuries, it is considered just and proper, to afford another opportunity to the appellants to lead cogent evidence to prove before the Tribunal, the factum of rash and negligent driving of the offending vehicle causing injuries to the appellants. Here, it may only be noted that the Tribunal did not proceed to assess the compensation, under issue no.2 on the quantum of compensation, having returned finding of rash and negligent driving against the appellants.

5. For the foregoing reasons, both the appeals are accepted and the impugned judgment-award is set aside and the matter is remanded back to the Tribunal to afford reasonable opportunities to the claimants/appellants to prove the involvement and the rash and negligent diving of the offending vehicle, which, according to them, resulted in injuries on their persons. Having afforded such opportunities, the Tribunal shall also afford reasonable opportunities to the respondent-the insurance company to lead evidence in defence and thereafter, afford an opportunity to the appellants in rebuttal, if, so desired. Having afforded such opportunities to lead evidence, the Tribunal shall then proceed to return its findings afresh on all the issues. For the purpose, the parties shall appear before the concerned Tribunal on **29.04.2019.**

6. Appeals stand disposed off accordingly.

7. *Dasti.*

A. K. CHAWLA, J

APRIL 10, 2019

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