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

% *Decided on: 24.07.2019*

+ **MAC.APP. 436/2018 & CM APPL. 18535/2018 & 47683/2018**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

ANITA & ORS Respondents

Through: Mr. Mehtab Singh, Adv. for R -1 to 5.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 19.02.2018 passed in motor accident claim petition numbered as MACT No. 5723/2016. The challenge is on the ground that there was no eye witness to the fatal accident thus there is no blame or liability of the offending vehicle, which was insured by the appellant. The learned counsel for the appellant refers to the DAR filed by the Investigating Officer and submits that the impugned order was passed merely on the basis of the Site-Plan but nothing was shown to the effect, that the alleged offending vehicle was involved in the accident or that it was due to negligence on the part of the driver of the offending vehicle. He also refers to the Inspection Report of the insured vehicle, wherein damages are shown to be on the front right side of the vehicle, whereas the damage to the motor-cycle, which the deceased was driving, was also on the front right side.

2. The learned Tribunal has dealt with the issue as under:

“...8. the onus to prove this issue was upon the petitioners. Prior to coming to the aspect of entitlement, the petitioners have to prove first that the accident due to which deceased has expired has been caused due to rash and negligent driving of the respondent no.1. to prove this fact PW1 Ms. Anita has deposed in her affidavit Ex.PW1/A in terms of her claim petition. She has deposed that the deceased was 42 years of age at the time of accident and was having good health and physique and was not addiction to any vices. The witness has been duly cross-examined but the testimony of PW with respect to accident and rash & negligent driving the offending vehicle by respondent no.1 could not be impeached.

9. The court has examined IO HC Raj Kishore as CW1, who deposed that on 05.03.2015, he was posted in PS Bawana and the case of FIR no. 167/15 of that police station was investigated by him. He deposed that during investigation, he went to spot and the driver had already left the offending vehicle i.e. Eicher Canter and fled away from the spot. He deposed that he served notice under Section 133 of the Motor Vehicles Act and the owner disclosed that Mr. Dharmender Kumar was driving that vehicle at the time of accident. He further deposed that no eye-witness was found till investigation remained with him and driver Dharmender Kumar was arrested by him and during investigation he prepared site plan and he proved copy of notice as Ex. CW1/1 and copy of site plan as Ex. CW1/2. In the cross-examination he deposed that he was not the eye-witness of the accident and he found two vehicles i.e. Eicher Canter and a motorcycle in accidental condition.

10. Keeping in view the proof of negligence while disposing off a claim under MACT, is not that strict as it is under Section 279/304A of IPC her evidence can be considered since there is no specific evidence led by other side. It is a matter of record that there is no evidence at all to show that victim was at fault, in any way. The fact that Mr. Sunil Kumar died in that accident is also supported by his post-mortem report on the dead body of victim. After investigation, police indicted respondent no.1 for offences punishable under Sections 279/304A of IPC. The FIR has been registered against respondent no.1 and he has not filed any complaint against the police before any higher authority against his alleged false implication, if any. Considering all the evidence as discussed above, it stands proved that accident in question was caused due to rash or negligent driving of vehicle No. DL-iLM-5525 by respondent no.1 thereby causing death of Mr. Sunil Kumar....”

3. It is not in dispute that according to the site plan the offending vehicle was behind the motor-cycle, which the deceased was riding. In other words, the deceased could not have injured himself, all on his own, unless his motor-cycle was hit by another vehicle. The only vehicle in close proximity at the site was the insured offending vehicle. When the policeman reached the site, he found that the driver of the offending vehicle had fled from the site and a crushed motor-cycle was lying on the road ahead of the offending vehicle. The injured victim had been rushed to the hospital and succumbed to the injuries. The damage to the offending vehicle is on the front right side. The offending vehicle was an Eicher-Canter truck. The fact that it had an impact and damage on its front right side, including the headlights, is sufficient indication that it is this vehicle which impacted the vehicle ahead

of it. The damage to the motor-cycle is not only on its right side but manifold.

4. The driver of the offending vehicle had also contended that the deceased was in a drunken condition, therefore the victim was himself liable for the fatality. However, no evidence was led in this regard. The Site-Plan shows that the motor-cycle is at point 'B' and the offending truck is at point 'A' behind it on the left side of the road. Quite clearly, the deceased was on the extreme left of the road and yet he was hit by the offending vehicle. The Mechanical Inspection Report attached to the DAR shows that the point of impact and damage is at the front right side portion and the same are fresh. It further shows that the offending vehicle had fresh damages on the front right side, fresh scratches and the lower side portion was slightly damaged.

5. In the circumstances, the conclusion arrived at by the learned Tribunal cannot be faulted. In motor vehicle accident cases, where eye witnesses are not available, the circumstances at the site of the accident often tell a story on their own. In this case: i) the DAR, ii) the Mechanical Inspection Report of the two vehicles and iii) the Site-Plan of the accident, sufficiently indicates that the insured vehicle was at fault and was being driven in a rash and negligent manner.

6. In view of the preceding discussion, the records of the case especially the fact that the offending vehicle was found at the site of the accident behind the damaged motor-cycle, sufficiently prove that it was involved in the accident. The damages to the motor-cycle are as a consequence of the impact by the offending insured vehicle.

7. The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

JULY 24, 2019

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