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

% *Decided on: 28.11.2019*

+ **MAC.APP. 562/2017 & CM APPL. 23748/2017**

NARESH KAUSHIK & ANR

..... Appellants

Through: Mr. R.K. Kohli, Advocate.

versus

JITENDER MALIK (BAJAJ ALLIANZ GENERAL INS CO LTD)

..... Respondent

Through: Ms. Suman Bagga, Advocate for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the order dated 26.04.2017 passed by the learned MACT in MACT No. 132/15, dismissing the appellant's claim filed under section 166 of the Motor Vehicles Act, 1988, on the ground that since rashness or negligence on the part of the driver or any other offending vehicle was not proven, there would be no case for compensation.

2. The deceased-Mr. Manu Kaushik, son of the appellants, died in a motor accident on the intervening night of 26th & 27th July, 2015. He was sleeping in the rear seat of the car which was being driven by Mr. Jitender Malik. The front passenger seat was occupied by Mr. Prateek Saini-PW-2, who had deposed that all three friends were returning from Manali to Delhi and that the accident happened some distance ahead of Mandi at about 4:30 in the morning. His cross-examination has been reproduced in the impugned order as under:-

“On 25.07.2015 at about 01:00 PM, I along with my friends Manu Kaushik and Jitender Malik had left for Manali by a car bearing no. HR-11G-6932 and on 26.07.2015 at about 03.00 AM, we reached Manali where we went for site seeing. On 26.07.2015 at about 08.00 PM, we left for Delhi and on intervening night of 26-27.07.2015 at about 12-12:30AM, we stopped our vehicle at some distance ahead of Mandi. At about 04-4.30 AM, we left for Delhi. I was sitting beside the driver seat and Manu Kaushik was sleeping on the back seat and Jitender Malik was driving the vehicle. I was also sleeping. I can not say as to how the above named Jitender Malik was driving the vehicle. I was conscious when the police recorded my statement in the hospital. I have studied upto graduation in B.Tech. I know the deceased Manu Kaushik for the last 12 years.

xxxxx by Sh. Ashok Budhiraja, Ld. Counsel for the respondent No. 1.

I can not say whether Jitender Malik was driving the car at a normal speed or not. Later on, I came to know that the accident took place due to negligent driving of the vehicle coming from opposite side of our car.

xxxxx by Sh. Amit Kumar, learned counsel for Respondent No. 2.

It is wrong to suggest that I was not sleeping at the time of accident. I had sustained injuries in the accident. I have not brought medical documents to show, that I sustained injuries in that accident. Jitender Malik sustained injuries on his forehead and back. I do not know at which hospital we had gone in Himachal Pradesh. It is wrong to suggest that I have not seen the accident. It is wrong to suggest that I was not present in the vehicle. It is wrong to suggest that I have lodged the FIR later on at behest of the petitioner. We had not checked into any hotel for taking rest etc.

Court Question:-

Q. Can you tell type and make of vehicle which came from opposite direction?

A. The same was a small car. However, I can not tell the specification of the same.

Q. Can you explain what you mean by the negligent driving of the vehicle coming from opposite direction?

A. I do not know about the accident occurred. However, our car fell in a ditch.

Q., Did the car which came from opposite direction hit your car?

A. No. Both the cars did not come in contact with each other. Later on I came to know that the driver had lost his control/balance of the vehicle and therefore, our car fell in the ditch.”

3. In his affidavit in evidence, the driver had deposed *inter alia*:-

“ 2. I say that the vehicle in question was duly insured with the respondent No.2 at the time of accident. I was also having valid driving license and all the relevant documents were handed over to the police as well as to the respondent No.2. I say that there was no negligence on my part and I was driving the vehicle at normal speed at the time of accident. The accident took place due to negligent driving of the vehicle coming from opposite side. My driving Licence is Exh. RW1/1/A.

4. In his cross-examination he has stated as under:-

“ ...I had given statement to the police that the accident had taken place due to the negligence of the vehicle coming from opposite side. However, I have no document in respect of the same. I know Mr. Prateek inasmuch as I alongwith Prateek, Manu (deceased) were working in the same company. It is correct that Mr. Prateek had given statement before the police. I had no enmity with Mr. Prateek. It is wrong to

suggest that accident took place on account my rashness and negligence in driving the vehicle at the time of accident.”

5. What emanates from the above is that the driver had contended that the accident occurred due to the negligent driving of the vehicle coming from the opposite side. It is quite possible that the offending vehicle was coming with its headlights on full beam, because of which the deponent driver got blinded or the offending vehicle came too close on the side of the deponent driver because of which he drove or moved his car off the road and resultantly fell into a ditch.

6. Ordinarily, a car would not go into a ditch unless its driver was negligent, drunk or not in control of the vehicle. Nothing has come on record to prove that the deponent was negligent or otherwise incapacitated from driving the vehicle at that moment. The inference of his statement is that, to avoid an accident, a car landed in a ditch. He has already stated that he was driving slowly and ordinarily a slow driven car would not meet the nature of accident that it had.

7. The learned counsel for the insurer contends that the vehicle did not fall into a ditch. Be that as it may, the vehicle going off the road came to a stop and that stop happened to be a depression into the earth which caused one fatality and injury to another passenger.

8. Quite evidently, the case set up by the appellants speak for themselves, leading to the inexorable conclusion that the accident happened on account of negligent driving of the offending vehicle which was being driven in a negligent manner as deposed by the driver of the victim vehicle.

In the circumstances, the compensation would have to be computed on the merits of loss of dependency or degree of disability and other factors, as may be applicable.

9. In view of the above, the impugned order is set aside and for such compensation, the case is remanded to the learned Tribunal for assessment on merits. The parties shall appear before the learned Tribunal on 15.01.2020. Since the accident happened in July, 2015 i.e. almost 4½ have gone by, the learned Tribunal is requested to endeavour to dispose-off the case, preferably within a period of six months from the date when the case is next listed before it. The learned counsel for the parties submit that they would also endeavour to assist the learned Tribunal on every date when the case is listed and will not take any adjournment whatsoever.

10. The appeal, alongwith pending application, is disposed-off in the above terms.

NAJMI WAZIRI, J

NOVEMBER 28, 2019

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