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

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Decided on: 24.07.2019

+ MAC.APP. 1042/2018 & CM APPL. 48854/2018

AVTAR SINGH

..... Appellant

versus

NASIM AHMED

..... Respondent

+ MAC.APP. 1043/2018 & CM APPL. 48870/2018

AVTAR SINGH

..... Appellant

versus

SAEEDA BEGUM & ORS

..... Respondents

Through: Mr. P.S. Sharma, Advocate for
appellant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns an award of compensation dated 12.07.2018 in claim petition numbered as MACT No. 357412/16 & 357406/16. The facts of the case are that on 18.04.2010, at about 9:30 p.m, a Tavera car, bearing Registration No. HR-67-3645, struck a motor-cycle bearing no. PB-11-AB-0752, on which three persons were riding. They all suffered injuries, one Rashid Ahmed succumbed to injuries on 19.04.2010, the other two injured persons survived. An FIR bearing no. 89/2010 was registered at Police Station, Civil Lines, Punjab for offences punishable under sections 279, 337,

338, 427, 304A IPC. The impugned order found the appellant's vehicle to be the cause of the accident.

2. According to the testimony of the parties, including that of one of the injured viz. Naseem Ahmed, they were returning from a mosque after offering their prayers, on the aforesaid date and time, they were hit from behind by the offending vehicle which was being driven in a rash and negligent manner; because of the violent impact, the rider sustained major injuries while Rashid was mortally wounded and later succumbed to his injuries.

3. It is the appellant's case that his vehicle was not involved in the accident but by a strange quirk of fate, it had struck against an electric pole, earlier, at some distance on another road. There is, however, no proof of the earlier accident against an electric pole. Much stress is laid on the fact that the motor-cycle of the claimants was never seized. However, the Court would note that the injured persons i.e. Nasim Ahmed and Mohd. Irfan had both deposed that the offending vehicle was the Tavera bearing No. HR-67-3645. Furthermore, the police had seized the offending vehicle.

4. The impugned order has dealt with this issue as under:-

"10. Now coming to the next limb of arguments as to whether there is any evidence to show that the accident in question had taken place due to rash or negligent driving of respondent no.1. In this regard, the testimony of PW Nasim Ahmed and respondent No.1 are relevant.

(i). Before analysing the testimony of above said witnesses, it is pertinent to state that the police had filed the chargesheet against the respondent no.1 and he was

held guilty for the offence punishable under Section 279/337/338/304A IPC by the court of Ld. Judicial, Magistrate-I Class, Patiala vide judgment dated 14.10.2013. This fact is admitted by respondent no.1 In his cross-examination. He also testified that he did not challenge the said judgment. This itself shows that the accident in question had taken place due to the rash and negligent driving of respondent no.1 and it further establishes that the accident was caused by the offending vehicle. Apart from that PW1 Nasim Ahmed in his examination-in-chief categorically deposed that when they reached near Fatak-23, Patiala, offending vehicle came at high speed in a rash and negligent manner and hit their motor cycle from back side. Consequently, they fell down and sustained injuries. Though PW1 was cross-examined at length, but nothing could be extracted which may help the respondents to show that no accident was caused by the offending vehicle.

(ii). From the testimony of PW1 Nasim Ahmed, it is clear that the offending vehicle hit the motor cycle from back side. This establishes that the accident had taken place due to rash and negligent driving of respondent no.1.

11. Now I proceed to analysis the testimony of PW1 Nasim Ahmed to ascertain as to whether there was any contributory negligence on his part or not?

(i). PW1 Nasim Ahmed in his cross-examination admitted that three persons were riding on the motor cycle and he was driving the motor cycle while other two were pillion riders. Though he was wearing helmet, but other two where not wearing helmet. He also admitted that the motor cycle was being driven by him without having a valid insurance.

(ii). Needless to say that riding of three persons on the motor cycle is in violation of provisions of M. V. Act. Being the driver and owner of the said motor cycle, Nasim Ahmed was not supposed to allow others to ride on his motor cycle

without wearing helmet. But he allowed them to ride the motor cycle as pillion riders without helmet. Similarly, it was also the duty of pillion riders not to ride on the motor cycle without helmet. Needless to say that the helmet is meant for the protection of riders, but both the riders preferred to ride the motor cycle without taking precaution. This shows that they were not vigilant about their safety. Similarly, PW1 Nasim was also not vigilant about the safety of his pillion riders.

(iii). Perusal of postmortem report of Mohd. Rashid reveals that he sustained head injury besides other injuries sustained on non vital parts of the body. The cause of death is mentioned as hemorrhage and shock. Had deceased Mohd. Rashid wearing a helmet, probably he would not have sustained head injury.

(iv). From the testimony of PW Nasim Ahmed, it is clear that Mohd. Rashid was sitting in last while Irfan was sitting in the middle. Since Nasim Ahmed was wearing helmet, he did not sustain head injury whereas Mohd. Rashid, who was not wearing helmet sustained head injury which proved fatal. No doubt, the accident had not taken place due to non wearing of helmet, but Mohd. Rashid sustained head injury because of non wearing of helmet. Thus, to my mind, Nasim Ahmed and deceased Mohd. Rashid, both were negligent to some extent for causing the death of Mohd. Rashid. Accordingly, I am of the view that a portion of claim amount is liable to be deducted towards their contributory negligence in causing the death of Mohd. Rashid.

(v). Considering the facts and circumstances of the case, contributory negligence on the part of deceased and Nasim Ahmed is assessed at 20% each. Resultantly, amount of 20% each from their compensation is liable to be deducted towards their contributory negligence. This deduction shall convey a message to the two wheeler riders that in case they found to ride the motor cycle/two wheeler, in gross violation of the provisions of M. V. Act, their conduct shall be considered at the time of assessment of just compensation.

(vi). In view of above. Issue No.1 is decided in favour of petitioners and against the respondents in both matters.”

5. As discussed above, the learned MACT has conclusively and for good reason found the appellant to have been involved in the fatality and two injuries.

6. The learned counsel for the appellant has relied upon an appeal filed by the appellant before the Punjab & Haryana High Court, in which he has annexed a site plan prepared by the local police on 19.11.2012. It shows that the accident happened at Point A and the driver of the vehicle crashed a little ahead from the site of the accident into an electric pole. Interestingly, the trajectory of the vehicle is undisturbed i.e. it goes ahead from the site of the accident and hits a pole across the road. The police have also recorded a statement of one, Mustakim, son of Yaseen Ahmed which reads as under:-

“Statement of Mustkim S/o Mohammad Yasin R/o H. No. 187, Bharat Nagar, Near Nabha Road, Patiala aged about 32 years.

Stated that I am resident of above mentioned address and working as a painter as private. Yesterday dated 18.4.2010 time at about 9:30 PM I am Mohammad Rasid son of Mohammad Sharif R/o H. No. 1844 Street Ira Bhurakman Gate East Delhi 6, Mohammad Naseem son of Yasin R/o H. No. 187 Bharat Nagar, Nabha Road, Patiala, Mohammad Irfan S/o Mohammad Hanif R/o H. No. D-410, West Vinod nagar Mandoli (Delhi). Who were going to 23 number Phatak on his Motor cycle bearing no. PB11AB 0752 after reading a Namaz at Bank Colony and I was going behind him on his own scooter. When we reached at 23 number Phatak then a high speed car came behind us, who hit his car in the

motor cycle of my maternal uncle (mama ji), due to hit in the motorcycle my maternal uncle and my brother Mohammad Nassem and Mohammad Irfan, who is my maternal aunt (mama ji) son injured badly and the car unbalanced and hit in the pole and the vehicle number was HR-67-3645 Tavera Colour Red and on asked the driver name knew that his name is Avtar Singh S/o Inder Singh R/o H. No. 259, New Basti Badungarh, Patiala and who ran away from the spot and left the vehicle on the spot and also knew that behind he had done another accident, who had done the accident with very high speed and negligently. With the help of public and Doctor Anita Goyal who came at the spot, she is working in Amar Hospital Patiala, who had admitted me in Rajindra Hospital, Patiala. During treatment my maternal uncle Mohammad Rasid got expired and my brother Mohammad Nassem and Mohammad Irfan are under treatment. Statement recorded to you, do the police proceeding.”

7. Quite clearly, what emanates from the above is that there were two eyewitnesses; that while all three riders on the motor-cycle suffered injuries, the injuries to Rashid Ahmed was fatal; the other two injured survivors testified to the nature of the accident; they also indentified the vehicle. Interestingly, the vehicle was found a little ahead from the site of the accident, where it had hit a pole across the street. The trajectory of the motor vehicle moving in the same straight line ahead is undisturbed till it crashed into an electric pole across the street. Furthermore, the testimony of Mustakim, who was stated to have been riding his own scooter, behind the motor-cycle on which the injured persons were riding, is also to the same effect. The appellant has been found guilty by a Criminal Court in FIR No. 89/2008. His involvement in the death of Rashid Ahmed and injury to the

other persons on account of his rash and negligent driving of the motor vehicle, Tavera model, bearing Registration No. HR-67-3645, is quite clearly established.

8. In view of the above, the Court finds no reason to interfere with the impugned order. The appeal is without merit and is accordingly dismissed.

JULY 24, 2019

AB

NAJMI WAZIRI, J.

