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

% ***Judgment delivered on: 18th January, 2019***

\+ MAC.APP. 954/2017 & CM APPL. 39162/2017

1. REHMANI BEGUM (Mother of deceased)
   W/o Late Sh. Rahis Ahmed
2. MUNABAR BANO (Unmarried sister of deceased)
   D/o Late Sh. Rahis Ahmed
3. TABASUM BANO (Unmarried sister of deceased)
   D/o Late Sh. Rahis Ahmed ...Appellant

Through: Mr. Manu Shahalia, Advocate.

versus

1. KRISHAN PAL (Driver)
2. AG ENVIRO INFRA PROJECTS P. LTD. (Owner)
3. NEW INDIA ASSURANCE CO. LTD. (Insurer) ...Respondents

Through: Mr. Dhirander Mathur, Advocate for R1 & R2. Mr. J.P.N. Shahi, Advocate for R3.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The Appellant/Claimant has challenged the impugned award in Suit No. 57308/16 dated 23.05.2017 passed by Sh. Vinay Singhal Additional District and Sessions Judge, MACT-02, (Central) Delhi (*henceforth referred to as the Tribunal*) whereby the claim petition on

account of failure to prove the cause of action qua the driver of the truck was established and the claim was dismissed.

2. The brief facts stated are that deceased Ziyakhan aged about 21 years was riding a motorcycle bearing No. DL-3S-CJ-2143 at about 3:15 AM on 30.08.2012 and was going from Darya Ganj, Delhi to Meharauli, New Delhi. Deceased Ziyakhan while going to Meharauli opted wrong direction of one way road and reached in front of BSES Office, JLN Marg, Darya Ganj, Delhi where his motorcycle was hit head on to a truck bearing No. DL-1M-5789 which was on MCD Duty. Due to the hit to the MCD truck, deceased fell down on the road and sustained fatal injuries, he was taken to L.N.J.P. Hospital where he was declared brought dead. Thereafter, FIR, FIR No. 186/12 under Section 279, 304A IPC was got registered on the same day at P.S. Darya Ganj.

3. The police investigated the case and filed the Charge Sheet under Section 279, 304A IPC on 17.10.2014 against Driver of Truck Krishan Pal (*Respondent No.1 herein*). Claimants filed the Suit No. 57308/16 demanding a compensation of Rs. 50 Lakhs from the Driver, Owner and Insurance Company for the death of the deceased.

4. The claimant, Mother of the deceased Rehmani Begum in support of her claim has examined herself as PW1 and filed affidavit Ex.PW1/A as Examination-in-Chief. She stated that she is mother of the deceased, Ziyakhan aged 21 years. Ziyakhan was a graduate and self employed and was earning Rs. 12,000/- per month. He was sole earning member of the family. His family consisted of one married elder brother aged 32 years alongwith two unmarried sisters of 24

years and 27 years and one mother (herself) employed with Delhi Police as cook. She relied on Election ID Ex.PW1/1, College ID of deceased Ex.PW1/2, Education proof of the deceased Ex.PW1/3(Colly.), MLC of deceased Ex.PW1/4, Post mortem report Ex.PW1/5, Death certificate of the deceased Ex.PW1/6 and Detailed Accident Report (Colly.) Ex.PW1/7. The claimant has not examined any other witness in the aforesaid petition.

5. Krishan Pal Respondent No.1, driver of MCD Truck filed written statement and stated that the said accident was not a result of his rash and negligent driving and that it was the deceased who was driving his motorcycle extremely fast on the wrong side of the one way road and resultantly hit the truck. He examined himself as R1W4 and relied upon his affidavit Ex.R1W4/A as Examination-in-Chief and stated that the motorcycle driven by the deceased hit the truck head on, despite his best efforts to avoid the collision. He further stated that after the accident he did not ran away from the spot. He has also examined S.I. Mahipal Singh, P.S. Darya Ganj, Delhi as R1W5 who has stated that the deceased was driving a motorcycle on wrong side of one way traffic road.

6. New India Assurance Co. Ltd. Respondent No.3 examined Sh. Ashok Kumar, Clerk, MLO Office Rohini Zone-II, Rohini Sector 16, Delhi as R3W2 who has brought the record Ex.R3W2/1 and proved that the driver of the truck was holding a valid license.

7. Learned counsel for the Appellant/Claimant has argued that the truck driver was negligent in driving the truck, truck bearing No. DL-1M-5789 and the onus lies on him to prove that he was driving the

aforesaid truck not negligently and further submitted that principle of *Res ipsa loquitur* applies to the instant case. The learned counsel on behalf of the Appellant further argued that the Tribunal misinterpreted the evidence and reached to the wrong conclusion.

8. Per contra, the learned counsel of Respondent No.1 and 2 has submitted that instant case does not fall under tortuous liability and the principle of *Res ipsa loquitur* does not apply. He further submitted that the appeal of the appellant be dismissed.

9. Tort is a civil wrong committed by a third person for which the remedy lies in unliquidated damages to compensate for the wrong so committed.

10. The doctrine of *Res ipsa loquitur*, in the instant appeal, initially onus lies on the Claimant that he was permitted to drive the motorcycle to the place of the incident and thereafter he met with an accident on the negligent part of the truck driver. Once the claimant discharges the onus that he was driving the motorcycle on the road with a valid driving license, then only the question of negligence on part of the truck driver arise. In the instant case the deceased neither had a learner's driving license nor was having a valid driving license. At the most the deceased would have been permitted to ride the motorcycle in a closed territory and not on the public road. The claimant has not examined any evidence to prove that he was holding the driving license at the relevant point of time. Therefore, his act of driving motorcycle on the public road in middle of the night was on his own risk. The truck driver merely being a party to the accident *per se* does not make him liable, particularly when Claimants has not

discharged their onus. The Claimant before seeking the relief has to prove that the deceased was holding a valid permit to drive at the time of the incident under Section 2(10) Motor Vehicles Act,1988.

11. In absence of a valid permit to drive deceased should not have driven motorcycle on public road which automatically infers a definite threat to the general public. In the instant case, time of the accident is 3:15 AM when generally the roads are free from traffic, if a person drives on the public road without valid driving license, the inference drawn could only be of accident and such act would not attract tortuous liability. Reliance is placed on ***Surender Kumar Arora And Another v. Manoj Bisla And Others*** (2012) 4 SCC 552.

12. As such, I find no infirmity with the impugned award passed by the Tribunal. Thus, the present appeal and application is accordingly dismissed and impugned award is upheld.

13. Let one copy of this judgment be sent to the concerned Court. No order as to costs. LCR File be sent back.

I.S.MEHTA

(JUDGE)

JANUARY 18, 2019