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

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Decided on: 10.12.2019

+ MAC.APP. 917/2015

KESHAV DUTT & ANR

..... Appellants

Through: Mr. Satish Aggarwala, Standing
Counsel with Mr. Akshay Saxena and
Mr. Gagan Vaswani, Advocates.

versus

CHARU BAJAJ & ORS

..... Respondents

Through: Mr. Jatinder Kamra, Advocate for R-1
to R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 30.06.2015, passed by the learned MACT in Suit no. 189/14/13, on the ground that the motor accident was caused on account of the rash and negligent driving of the scooter by the deceased himself as he struck the alleged offending government owned motor car from the rear side. It is argued that, therefore, no liability can be passed upon the appellants apropos any injury or loss of life caused to such rash and negligent scooterist.

2. In the unfortunate accident which occurred on 06.07.2013, Mr. Pravesh Kumar died when his vehicle was hit from behind by a Government ambassador car bearing registration no. DL-6CA-9821. It was being driven

by appellant no. 1. An FIR bearing no. 258/13 was registered under section 279/304A IPC at Police Station S.L. Colony. It was proven that the accident happened near the Millennium Bus Depot Gate No.4, opposite Shanti Stupa, I.P. Park, New Delhi.

3. It is the appellants' case that the driver of the said car had stopped at the aforesaid spot to relieve himself by the roadside and when he returned to the car which was parked by the roadside, he saw that one scooter bearing no. DL-6SE-6448 had hit the car from the right side near bumper from behind and two persons were in injured condition. The claimants, however, had set up a case that on the said date at about 09:40 hrs, when the deceased was going on a scooter, he was hit by the aforesaid speeding car. He received grievous injuries; he was rushed to AIIMS Trauma Centre where he succumbed to the injuries.

4. The issue of whether the car hit the scooterist or the scooterist crashed into the car from the rear side has been discussed in detail in the impugned order as under:

“13. Petitioner no.1 examined herself and deposed that the accident took place on account of rash and negligent driving of respondent no.1. However as she is not the eye witness to the accident, not much of credibility can be given to her statement. PW2 being the pillion rider and eye witness was examined by the petitioner. It is the contention of ld. Counsel for the respondent no.1 and 2 that the witness has categorically stated that he did not see the offending vehicle and that he was not in a position to give the details of its make and registration number. It is the contention of ld. Counsel for the respondents no.1 and 2 that the victim was himself driving the scooter, rashly and negligently and that the victim himself hit the stationary car which was lying

parked and it is for this reason alone that the damage is only in respect of the rear right portion of the car no. DL6CA-9821 and that the scooter has received damages only on the front portion.

14. In so far as the failure of PW2 to give details of the offending vehicle is concerned, the same is inconsequential in as much as the factum of accident is admitted by the respondents in the WS. There is no denying that the accident took place involving the aforementioned vehicles. What is denied in the WS and being vehemently argued by the respondent no.1 and 2 is that there is no rash and negligent act on the part of the respondent no.1. It is the submission of the respondent no.1 that the vehicle was lying parked and it was the scooter itself which hit the car from behind. It is the contention of the ld. Counsel for respondent no.1 that the vehicle was lying parked on the extreme left side of the road, and it is for this reason that the damage to the car is on the rear portion of the right side of the car. When collated with statement of the PW2, it comes clear that the contention raised by ld. Counsel for the respondent no.1 and 2 are not factually correct in as much as PW2 has categorically stated that the vehicle hit the scooter from rear side and it is for this reason he could not see the vehicle. In his cross examination by ld. Counsel for respondent no.1 and 2 the witness has categorically denied that the victim had hit his scooter to the stationary vehicle lying parked ahead or that he could not realize the presence of the stationary vehicle on the right side, and that he could not control the scooter being at a very high speed, resulting into his hitting the stationary vehicle ahead. Contention is further belied from the document placed along with DAR in as much as the seizure memo of the car shows that car has suffered damage on the left side and its left side is also blood stained. Even as per mechanical

inspection report of the car its front bumper is recorded to be dented/scratched and that the left side of the body of the car bears dried blood stains/marks and the left front fender is also recorded to be dented. Although damages to the car on its right side are also recorded but the same are inconsequential. Resultantly, it can not be said that the scooter hit the rear right portion of the stationary car

15. Considering the fact that the witness PW2 in categorical terms stated that the vehicle had hit the scooter from behind, the nature of damages recorded in the mechanical inspection report of the offending vehicle, and other attendant circumstances, it is clear that it was car which hit the scooter and not visa versa. The petitioner side has been able to prove that the accident was caused on account of rash and negligent driving act on the part of the respondent no.1. Even otherwise, it has been held by Hon'ble Supreme Court that the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident, has been left to a secondary importance, and mere use or involvement of motor vehicle in causing bodily injury or death to a human being or damage to property, would make the petition maintainable under section 166 and 140 of the Motor Vehicle Act. No roving inquiry into rashness or negligence on the part of the driver, is to be made. In the case of Basant Kaur and others vs. Chattar Pal Singh and Ors.- 2003 ACJ 369 MP (DB), it was observed that registration of criminal case against driver of offending vehicle is enough to record finding that the driver of the offending vehicle is responsible for causing the accident. The issue no. 1 is accordingly decided in favour of the Petitioner. ”

5. On a query put to the learned counsel for the appellant as to what is the error in the reasoning and conclusion of the impugned order, there is no

worthwhile answer forthcoming. In the aforesaid circumstances, the Court finds no reason to interfere with the impugned order. Therefore, the appeal is dismissed.

6. Interim order stands vacated.

7. The awarded amount, if not already deposited, shall be deposited before this Court, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified in the earlier orders of this Court.

8. The learned counsel for the respondents refers to the order dated 15.02.2019, when the application for amended memo of parties was allowed and submits that respondent no. 4, namely, Sh. Chaman Lal has died and he has no legal heirs other than the present respondent nos. 1, 2 & 3. However, there is nothing on the record to prove that the estate of the deceased respondent no. 4 would be succeeded only by his grand children and his daughter-in-law.

9. In the circumstances, the share of the said deceased respondent shall be kept separately till such time it is proven that respondent no. 4 has no other legal heirs who could claim his estate. It will be open to the respondents to move an appropriate application in this regard.

10. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

NAJMI WAZIRI, J

DECEMBER 10, 2019

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