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

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Decided on: 06.01.2020

+ MAC.APP. 1/2020, CM APPL. 6/2020 & CM APPL. 7/2020

DELHI JAL BOARD & ANR

..... Appellants

Through: Ms. Garima Jindal, Advocate.
(Mob.-9811138858)

versus

SANJAY CHAUHAN & ORS

..... Respondents

Through: Mr. Ghanshyam Thakur, Advocate
for R-1 alongwith R-1.
(Mob.-8586816803)

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 08.07.2019 passed by the learned MACT in MACP No. 882/17, on the ground that the appellant has been erroneously held liable for payment of the compensation. It is the appellants' case that neither its truck nor the driver was involved in the unfortunate accident which ended the life of a pillion rider, who was travelling on a scooty bearing Registration No. DL-8SBV-5436, with her husband. The learned Tribunal returned a finding that the two riders were hit by the offending vehicle – a water tanker, at about 1:00 pm on 04.08.2017 on Khanjawala Road. The fatality occurred because of the rash and negligent driving of the tanker driver. The police arrested him and seized the

offending vehicle, from the place where it had moved on after the accident for distribution of water.

2. The appellant had denied the involvement of its vehicle in the accident. However, Mechanical Inspection Report conducted by the police, shows that there was a dent on the rear side of the scooty and a corresponding dent on the front side bumper of the offending vehicle. Furthermore, criminal prosecution has been initiated against the driver of the offending vehicle. It is the appellants' case that the water tanker, after being filled with water, left the Delhi Jal Board premises at 1:05 pm. The learned counsel for the appellant relies upon the vehicle movement register and states that the accident had already occurred even before the vehicle left the Delhi Jal Board premises with its tanker full. The appellants have not complained to the senior police officials about any wrongful implication of the driver or the involvement of their vehicle in the accident. The impugned order has dealt with this issue as under:-

“13. He has been duly cross examined by Ld. Counsel for the petitioners, in his cross examination, he has deposed that his office is also situated at Nangloi, West-III, Delhi Jal Board. He has also deposed that at one point of time, many number of water tanker used to come for filling water and the water tanker are not filling in my presence. He, voluntarily, deposed that it is other official who used to do it. He further deposed that he even cannot tell which water tanker is filled water at which point of time and when it departs for distribution from filling station, Delhi Jal Board. He has also deposed that he has not filed any document with his affidavit to show that the offending vehicle was filled with the water and departed for distribution as stated in para no. 2 of Ex. RW-2/A. He denied that the contents of para 2 of Ex. RW2/A are incorrect as he was not present on the date and time of

accident. He further deposed that he can not tell whether any Department Inquiry has been proposed against Manjeet Singh (respondent no. 1 herein) who was driving tanker bearing registration no. DL-1LM-8769 on the date and time of accident.

20. It is an undisputed fact that FIR No. 306/17 U/s 279/304A IPC & 146/96 of M.V. Act, was registered with regard to the accident in question. Record shows that the FIR was registered on 04.08.2017, on the day of accident itself and has been registered promptly and without any delay. The site plan shows that both, the offending bus and the scooty on which the deceased was the pillion rider were proceedings in the same direction. The IO of the case also carried out the mechanical inspection of both the vehicles. As per the mechanical inspection report of the offending vehicle bearing registration no. DL-1LM-8769, the same is found to have been damaged from front side bumper and left side corner. The mechanical inspection of the scooty on which the deceased was the pillion rider reveals that the scooty was damaged from rear right side body and handle scratched meaning thereby that the scooty was hit by the offending vehicle from behind. The postmortem report clearly shows that the cause of death is shock, subsequent to polytrauma, as a result of blunt force impact over head, chest and abdomen. All injuries are antemortem in nature and possible in manner as alleged (i.e. RTA). All this with the deposition of PWs cumulatively proves that the offending vehicle bearing registration no. DL-1LM-8769 was being driven by Respondent no.1 in a rash and negligent manner resulting into the death of the deceased Smt. Usha Rani on the aforesaid date, time and place. The respondent has unsuccessfully takes the plea of not being present.”

3. What emanates from the preceding discussion is that the records of the Delhi Jal Board hardly support its case, because their own witness admitted that at any given time, there were number of tankers next to each other waiting to get the water filled. Which tanker was filled first, he could

not tell. He also admitted that the offending vehicle was not replenished with water in his presence but in the presence of some other officials. He was also unable to bring on record any document to show as to when the offending vehicle departed for distribution of water from the filling station. Therefore, the simple recording in the Register that the tanker left Delhi Jal Board premises at 1:05 pm, does not necessarily prove that it actually left the aforesaid premises at the said time. In any case, the police had investigated the matter and found that the said tanker was indeed the vehicle that caused the unfortunate accident. The learned Tribunal has relied upon the judgment of the Supreme Court in *State of Mysore vs. S.S. Makapur* 1993 (2) SCR 943, *Bimla Devi and Ors. vs. Himachal Road Transport Corporation and Ors* (2009) 13 SC 530, *N.K.V. Brothers (P) Ltd. vs. M. Karumal Ammal* AIR 1980 SC 1354 and of this Court in *National Insurance Company Pvt. Ltd. vs. Smt. Pushpa Rana & Ors.* 2008 II AD (Delhi) 269, which reiterate the principle that in motor accident claims, an inquiry has to be made by the learned Tribunal about the manner and nature of the accident i.e. preponderance of probabilities has to be seen. Proving the case beyond reasonable doubt, as required during criminal proceedings is not required in the proceedings seeking compensation. The FIR was registered and criminal proceedings were initiated. The aggrieved husband himself is the best witness. He deposed in his evidence by way of affidavit that:

‘...At about 1.00 pm, when we reached at main Kanjhawala Road, near Shilpa Gas Agency, Karala, Delhi, there was water logging on the road, therefore, I slowed down my above said scooty, in the meantime all of a sudden the offending vehicle i.e. Tanker bearing No. DL-1M-8769, which was being driven by its driver in a rash, negligent

and reckless and in zig-zag manner, without blowing horn and at a very breakneck speed, by violating traffic rules and regulations, hit our scooty with great force. Due to the heavy impact we fell down on the road and my deceased wife came under the front wheel of the said offending vehicle which resulted her unfortunate premature death on spot. The accident took place due to the rash and negligent driving of respondent no. 1.”

4. In view of the above, the inexorable conclusion of rashness and negligence of the driver of the offending vehicle- water tanker is established. Nothing more was required to be seen or done by the learned Tribunal. Accordingly, the impugned order does not call for any interference. The appeal is without merit and is accordingly dismissed, alongwith pending applications.

5. The statutory amount, alongwith interest accrued thereon, be deposited into the ‘AASRA’ Fund created by this Court.

6. Let the awarded amount alongwith interest @9% p.a. from the date of filing of the Claim Petition till its realization, be deposited before the learned Tribunal within three weeks from the date of receipt of a copy of this order, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

NAJMI WAZIRI, J

JANUARY 06, 2020

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