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

Date of decision: 21.08.2023

+ MAC.APP. 811/2019

RAJENDRA NATH CHATURVEDI & ORS Appellants

Through: Mr.Shashank Garg, Mr.Shrey
Chathly, Mr.Aseem Chaturvedi,
Advs.

versus

RAJ KUMAR & ANR (NATIONAL INSURANCE CO LTD)

..... Respondents

Through: Mr.Rajiv Dewan, Mr.Angad
Singh, Mr.Manoj Kumar, Adv.
for R-1.
Mr.Manoj Bhandari, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the order dated 02.05.2019 passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts (hereinafter referred to as the 'Tribunal') in Suit no.75392 of 2016, titled ***Sh. Rajendra Nath Chaturvedi & Ors. v. Raj Kumar & Anr.***, dismissing the Claim Petition filed by the appellants herein, by observing that the appellants had failed to prove that the accident occurred due to the rash and negligent driving of the alleged offending vehicle, that is Maruti Swift Dezire bearing Registration no. DL-8C-AB-6900, belonging to the

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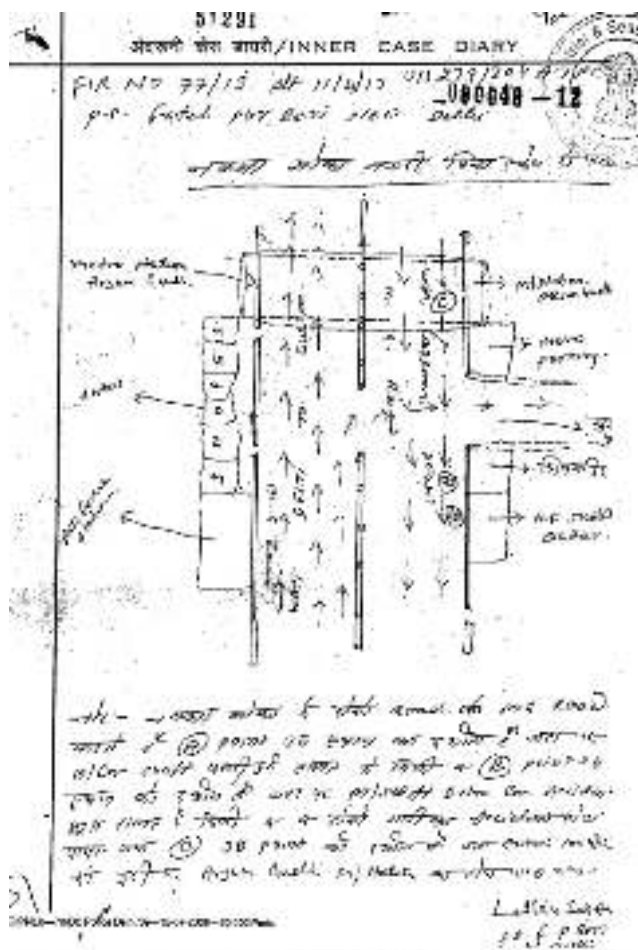
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respondent no.1 herein.

2. The learned counsel for the appellants submits that the above finding of the learned Tribunal ignores *inter alia* the reply given by the respondent no.1 to the notice issued under Section 133 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), wherein he admitted that at the time of the accident, which occurred at 2.30 a.m., he was going to Gurgaon from Mehrauli, Delhi. Referring to the Site Plan prepared by PW-4, SI Lallan Sah, he submits that the Site plan clearly shows that the offending vehicle was moving on the wrong side of the main road and, therefore, the finding of the learned Tribunal is totally perverse. He further submits that the respondent no.1, in fact, fled from the spot of the accident. He submits that the respondent no.1 did not also enter appearance before the learned Tribunal nor led any evidence.
3. On the other hand, the learned counsels for the respondents submit that merely from the Site Plan, it cannot be presumed that the accident occurred due to the offending vehicle being driven by the respondent no.1 in a rash and negligent manner. They submit that the accident may have occurred due to the deceased- Late Sh.Soumitra Chaturvedi, driving his own vehicle in a rash and negligent manner.
4. I have considered the submissions made by the learned counsels for the parties.
5. As has rightly been pointed out by the learned counsel for the appellants, the respondent no.1, in answer to the notice issued under Section 133 of the Act, had categorically stated that at the time of

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*FIR No. 77/13 Dt 11.4.13 U/s 279/304 A IPG
PS Foteh Pur Beri Ne w Delhi.*

Rough Site plan with scale.

NOTE:

Both road in the site map are called M G Road A point shows the said place where M/Car Swift has been found in overturned condition and B Point shows the said place where M/ Swift Dzire car was found in accidental condition and found occurring of accident of both the cars. (C) show the said pace where at a distance of about 100 meters Arjun Garh M/Satin has been found.

*Sd/- Lallan Saha
PS F.P Beri ”*

6. The Site Plan clearly shows that the above ‘Point B’, which reflects the car driven by the respondent no.1, was on the wrong side of the road, as it is the side where the traffic going from Gurgaon to Delhi is supposed to be plying. This clearly shows that the accident occurred due to the respondent no.1 being on the wrong side of the road. In the absence of any contrary plea taken by the respondent no.1 before the learned Tribunal, in fact, not even appearing before the learned Tribunal nor leading any evidence before the learned Tribunal, the learned Tribunal has clearly eared in holding that the Appellants/Claimants have been unable to prove that the accident occurred due to the offending vehicle being driven in a rash and negligent manner. The finding of the learned Tribunal in the Impugned Award cannot be sustained.
7. Accordingly, the Impugned Award is set aside.
8. The Claim Petition filed by the appellants is remanded back to the



learned Tribunal for a fresh determination, including on the amount of compensation that is to be awarded to the Claimants. As the evidence already stands recorded before the learned Tribunal; the accident had occurred on 11.04.2013, that is more than 10 years ago; as also the appellant no.1 is stated to be 80 years old, the learned Tribunal is requested to expedite the adjudication of the Claim Petition and make a sincere endeavour to decide the same within a period of three months of the remand.

9. The parties shall appear before the learned Tribunal on 26th September, 2023.
10. The appeal is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

AUGUST 21, 2023
RN/ss