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

Date of decision: 28.07.2023

+ **MAC.APP. 217/2023**

SHRI RAM GENERAL INSURANCE COMPANY LTD
INSURER Appellant

Through: Mr. Amankant Mishra, Adv.

versus

RAM DHAN BAHADUR AND ORS Respondents

Through: Mr. S.N. Parashar, Adv. for R-1
to R-4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 20998/2023 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 20999/2023 & CM APPL. 21000/2023

2. For the reasons stated in the applications, the delay in filing and re-filing is condoned.

3. The applications are disposed of.

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4. This appeal has been filed challenging the Award dated 21.09.2022 passed by the learned Motor Accidents Claims Tribunal-01 South West, District Dwarka Courts, New Delhi (hereinafter referred to as the learned 'Tribunal') in MAC No.

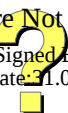


Kumar & Ors..

5. By the impugned Award, the learned Tribunal on appreciation of the evidence led by the parties has held that the deceased Chandan Shah died in the motor accident due to the offending vehicle, that is, Truck bearing registration no. HR 55R 3873, being driven in a rash and negligent manner by the driver. The challenge of the appellant to the impugned Award is on this finding.

6. The learned counsel for the appellant submits that there is a material contradiction in the statement of PW-3-Mr. Praveen Raj, an alleged eye-witness of the accident, inasmuch as in his statement recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C'), he has stated as under:

"I reside at the aforementioned address and I do private job. That on 18-11-2017 at midnight around 12 O'clock, I came out of my Apartment (Apna Apartment) at Dwarka for a walk. That there was a truck standing near the DDA Ground Gate, whose driver has suddenly accelerated the vehicle and that the vehicle got dis-balanced and negligently hit the person lying in quilt on the pavement and thereafter left with his vehicle. I have noted down the number of the offending vehicle as HR 55R 3873 and that since it was late night, I left for my home. That in the morning of 19-11-2017 morning when I was going for a walk then there was foul smell of dead body coming from the quilt, then I had called 100 number and since I had some urgent work, I had left and today I had come to tell regarding the





manner of accident and involvement of the vehicle....”

7. On the other hand, before the learned Tribunal, Mr.Praveen Raj has stated as under:

“I say that on 19-11-2017 at about 7.50 AM deceased Chandan Shah was standing on the service lane near Apna Niwas Section-01 Dwarka. One Truck bearing No. HR 55R 3873 which was driven with very rash and negligent manner without obeying any traffic rules hit Chandan Shah. Due to this impact Chandan Shah fell down on the road and received fatal injuries. The Police Officials have already taken my statement regarding this statement.....”

8. The learned counsel for the appellant submits that, therefore, there is a material contradiction in the statement of the alleged eye-witness.

9. The learned counsel for the appellant submits that PW-3 was not a summoned witness but had appeared before the learned Tribunal at the instance of the respondents/claimants. He submits that the Court should draw an adverse inference on his testimony on this account.

10. On the other hand, the learned counsel for the respondents submits that the Investigating Officer of the accident, Sub Inspector Raj Kumar, had appeared as a witness of the appellant as R3W1 and in his testimony, he stated that the information regarding the accident was received at number 100 from PW-3 Praveen Raj. He submits that, therefore, the presence of PW-3 at the time of the accident and him giving a true account of the accident stands established.



11. I have considered the submissions made by the learned counsels for the parties.

12. PW-3 in his statement under Section 161 of the Cr.P.C. has clearly identified the offending vehicle. He has not shifted his stand from the same before the learned Tribunal as well. The involvement of the offending vehicle in the accident has not seriously been denied by the respondent no.3. In fact, respondent nos. 1 and 2 did not enter the witness-box before the learned Tribunal to even contest the same. Even the appellant did not call the driver of the offending vehicle before the learned Tribunal for giving his evidence. The learned Tribunal has, therefore, rightly relied upon the version of the accident narrated by PW-3 in his statement before the learned Tribunal. Though, there may be some contradiction in the same *vis-à-vis* his earlier statement under Section 161 of the Cr.P.C., in my view, that is not sufficient to disentitle the respondents from their claim. In both the versions, it is clearly stated that it is the offending vehicle which was being driven in a rash and negligent manner, and caused the death of the deceased in the accident. The claimants are not to prove their claim before the learned Tribunal beyond reasonable doubt but on preponderance of probabilities. Such onus has been discharged by the claimants.

13. The assertion of the learned counsel for the appellant that the statement of PW3 should be disbelieved only because he was not a summoned witness, also cannot be accepted. It is not

shown that PW3 had some relationship with the deceased or the claimants nor is it shown that he would have any other reason to



give a false testimony on behalf of the claimants.

14. In view of the above, I find no merit in the present appeal and the same, along with the pending applications, is dismissed. If not already deposited, the appellant shall deposit the awarded amount with the learned Tribunal within a period of four weeks from today. The same shall be released to the respondents in the terms of the impugned Award.

15. As the appeal stands dismissed, the statutory amount deposited by the appellant, along with interest accrued thereon, be refunded to the appellant.

NAVIN CHAWLA, J

JULY 28, 2023/SA/am