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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 15.12.2023***+ **MAC.APP. 237/2020 & CM APPL. 58144/2023****M/S NATIONAL INSURANCE COMPANY LTD. ...Appellant****Through: Ms.Hetu Arora Sethi, Adv.****versus****SMT SHWETA ANAND & ORS.Respondents****Through: Mr.Rohit Goel and Mr.Avdhesh
Rai, Advs.****CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. With the consent of the learned counsels for the parties, the appeal is taken up for hearing today.

2. This appeal has been filed challenging the Award dated 22.11.2019 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (West-01), Tis Hazari Courts, Delhi (hereinafter referred to as 'Tribunal') in MACT Case No. 534/2017, titled as ***Smt.Shweta Anand & Ors. v. Sh.Anil Vishwakarma & Ors.***

3. It was the case of the respondent nos. 1 to 5 herein, who were the Claimants before the learned Tribunal, that on 15.04.2017, the deceased was driving his motorcycle on Sat Guru Ram Singh Marg, Mayapuri, Delhi. As he reached in front of the Green Lounge Banquet



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Hall, a Truck bearing registration no. HR-55R-6738 (hereinafter referred to as 'Offending Vehicle'), which was being driven by the respondent no. 6 herein in a rash and negligent manner and at a very high speed, hit the motorcycle of the deceased from behind with great force. Due to the said impact, the deceased fell down on the road and the Offending Vehicle ran over the deceased. The respondent no. 6 tried to flee away from the spot of the accident but was apprehended near Dharam Kanta. Though, the deceased was taken to the DDU Hospital, the doctors declared him as 'brought dead'.

4. Based on the evidence led by the parties, the learned Tribunal, in its Impugned Award, has held that the accident and the resultant death of the deceased had taken place due to the Offending Vehicle being driven in a rash and negligent manner by the respondent no. 6 herein. It is with this finding that the appellant is aggrieved of and has challenged the same before this Court.

5. The learned counsel for the appellant submits that Mr.Prince (PW-3) was set up by the respondent nos. 1 to 5, that is, the Claimants, as an eye witness to the accident. However, in his cross examination, he admitted that he had not seen the accident and, in fact, could not even tell the vehicle which had caused the accident. She submits that the learned Tribunal, therefore, has wrongly held that the accident had taken place with the Offending Vehicle being driven in a rash and negligent manner.

6. On the other hand, the learned counsel for the respondent nos. 1 to 5 submits that the Offending Vehicle was seized from the spot of the accident. He submits that the respondent no. 6, the driver of the



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Offending Vehicle, though denied having caused the accident, did not enter the witness box. He submits that the police has also filed an FIR against the respondent no. 6.

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

8. The FIR No. 0096 dated 15.04.1997, registered at Police Station Mayapuri, records that the Offending Vehicle was found in an accidental position at the spot of the accident. It had been stopped by the members of the public. The Statement of PW-3 was recorded by the police, who stated that the accident had been caused by the Offending Vehicle. The respondent no.6, the driver of the Offending Vehicle, was apprehended from the spot of the accident.

9. In his written statement, the respondent no. 6 denied that the accident had taken place with the Offending Vehicle. However, he did not enter the witness box. He would have been the best person to refute the allegation of the respondent nos. 1 to 5 herein, that is, the Claimants, that the accident had been caused because of the Offending Vehicle being driven in a rash and negligent manner.

10. As far as statement of PW3 is concerned, it is not uncommon for the witness to turn hostile. However, in the present case, the surrounding circumstances corroborate his initial statement that the accident had been caused due to the Offending Vehicle being driven in a rash and negligent manner. As noted above, his statement was also recorded by the police at the time of registration of the FIR.

11. It is a settled law that in a Claim Petition filed by the victims of a road accident for seeking compensation, the Claimants are not to



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prove their case beyond reasonable doubt, but only on the touchstone of preponderance of probabilities.

12. In the present case, there was sufficient evidence before the learned Tribunal to arrive at the conclusion that the accident had taken place with the Offending Vehicle being driven in a rash and negligent manner.

13. I, therefore, find no infirmity in the Impugned Award. The appeal, accordingly, stands dismissed.

14. This Court, by its *Interim* Order dated 27.11.2020, had directed the appellant to deposit the awarded amount, and the same to be kept in interest bearing Fixed Deposit Receipts. It was further directed that upon deposit, a sum of Rs.6,00,000/- along with interest accrued thereon shall be released to the respondent nos. 1 to 5 herein, in terms of the scheme of disbursement specified in the Impugned Award.

15. By a subsequent Order dated 30.11.2021, this Court clarified that in terms of the Order dated 27.11.2020, out of the said amount of Rs.6,00,000/-, a sum of Rs.4,04,480/- along with interest at the rate of 9% per annum be released in favour of the respondent no.1, the wife of the deceased; while the balance amount of Rs.1,95,520/- along with interest at the rate of 9% per annum be proportionally released in favour of the wife (40%), daughter and son (20% each) (to be released through mother, the natural guardian), and 10% each in favour of mother and father of the deceased.

16. By a subsequent Order dated 16.11.2022, another sum of Rs.10,00,000/- was directed to be released in favour of the respondent nos. 1 to 5 as per the scheme of the Award.



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17. Now, that the appeal stands dismissed, the balance awarded amount, along with interest accrued thereon, be also released in favour of the respondent nos. 1 to 5 in terms of the scheme of disbursal and in the proportion prescribed by the Impugned Award.
18. The statutory amount deposited by the appellant be released to the appellant along with interest accrued thereon.
19. The appeal along with the pending application is disposed of in the above terms.
20. There shall be no orders as to costs.

NAVIN CHAWLA, J

DECEMBER 15, 2023/ns/ss

Click here to check corrigendum, if any