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

*Date of decision:*21.09.2023

+ MAC.APP. 435/2023

TATA AIG GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr.Rudra Kahlon, Ms.Vandana
Kahlon, Advs.

versus

PRAKASH NARAIN SHARMA @ PRAKASH SHARMA &
ORS. Respondents

Through: Mr.Satish Kumar Paanchal,
Mr.Gajender Sharma, Mr.Karan
Paanchal, Advs. for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 48282/2023

1. For the reasons stated in the application, the delay of 92 days in filing the appeal stands condoned.
2. The application stands disposed of.

CM APPL. 48281/2023

3. This application has already been allowed vide order dated 18.09.2023. The same should not be shown in the Cause List.

MAC.APP. 435/2023 & CM APPL. 48280/2023

4. This appeal has been filed by the appellant challenging the

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MAC.APPL.435/2023



Award dated 15.03.2021 (hereinafter referred to as the ‘Impugned Award’) passed by the learned Motor Accidents Claims Tribunal-01 (West), Tis Hazari Courts, Delhi (hereinafter referred to as the ‘Tribunal’) in MACT Case no.242/2021, titled ***Prakash Narain Sharma@ Prakash Sharma and Anr. v. Mohit Bhatia and Anr.***

5. In the Claim Petition, it was the case of the respondent nos.1 and 2 herein that on 10.06.2021 at about 7:35 pm, at near Round about, Red Light, upper side of underpass, Rohtak Road, Punjabi Bagh, Delhi, when the deceased- Sh.Ankit Sharma was coming back to his home after finishing his duty on a scooty bearing no.DL-8S-BH-1161, the deceased was hit by the offending vehicle, that is a WagonR Car, bearing registration no.DL-2C-AL-9628. Due to the accident, the deceased fell down and sustained multiple injuries. He was shifted to Maharaja Agrasen Hospital, Punjabi Bagh, Delhi where he unfortunately succumbed to his injuries on 11.06.2021.

6. The limited challenge of the appellant to the Impugned Award is on the contention that the offending vehicle has been wrongly implicated in the accident.

7. The learned counsel for the appellant, placing reliance on the General Diary Entry, being GD no.0103A dated 10.06.2021, submits that the phone call informing the police of the accident had informed that the accident had taken place with a car bearing registration no.DL...9229, color gray. It was only later, that on the statement of Mr.Pradeep Makhija (PW-4), the alleged eye witness, the offending vehicle was involved in the accident. In support of the same, he also



places reliance on the reply dated 09.03.2022 received under the Right to Information Act, 2005, enclosing therewith the copy of the 'Emergency Response Support System (ERSS)', which again records that the initial report received by the police was of the accident taken place with a car bearing registration no.DL...9229. It is only later, that on the statement of the PW4, the identity of the offending vehicle was disclosed and it was found out that the same was involved in the accident.

8. The learned counsel for the appellant relies upon the Evidence by way of Affidavit filed by the respondent no.3 herein, that is, the owner of the offending vehicle, wherein he stated that he was not present on the spot at the time of the accident, and was subsequently falsely implicated in the accident.

9. On the other hand, the learned counsel for the respondent nos.1 and 2, who appears on advance notice, submits that PW-4 in his statement has clearly stated that the accident had taken place by the offending vehicle hitting the scooty driven by the deceased from the backside. PW-4 was cross-examined, however, his testimony could not be shaken and he had maintained the same throughout. He submits that even the mechanical report of the offending vehicle as also the scooty supports the testimony of the PW4. He submits that ERSS itself records that on the very same day of the accident and nearabout the same time, the police had recorded the statement of PW-4, in which he stated that the accident had taken place with the offending vehicle hitting the scooty which was driven by the deceased, from the



backside.

10. I have heard the submissions of the learned counsels for the parties.

11. PW-4 in his statement has clearly stated that the accident had taken place with the offending vehicle hitting the scooty being driven by the deceased, from the backside. His statement had been recorded by the police on the date of the accident itself and nearabout the time of the accident. In fact, it was PW-4 who had informed the police of the accident. Merely because in the telephone call by which information was communicated to the police, an incorrect registration number and color was recorded by the person taking the call, it cannot be a ground to disbelieve PW-4. Keeping in mind that PW-4, who is not stated to be in any manner connected either with the claimants, the deceased, or the respondent no.3, the driver of the offending vehicle, I find no reason to suspect his statement. He has no reason to falsely testify in favour of the respondent nos.1 and 2 or against the respondent no.3. It is not as if PW-4 came to the light much after the accident and, therefore, may have been set up by the respondent nos.1 and 2 for any reason. The statement of PW4 remains unshaken even in his cross-examination. His statement has, therefore, rightly been relied upon by the learned Tribunal to find the involvement of the offending vehicle in the accident. The mechanical reports of the offending vehicle as also the scooty also substantiate and corroborate his statement.

12. It is also not shown as to why the police would falsely implicate

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MAC.APPL.435/2023



the respondent no.3 in the accident. In fact, during the cross examination, the driver of the Offending Vehicle admitted to his presence at the spot of the accident.

13. It must be kept in mind, as also held by the Supreme Court in the case of *Sunita and Ors. v. Rajasthan State Road Transport Corporation and Ors.*, that while deciding claim petition arising out of a motor vehicular accident, the claimants are not to prove their case beyond all reasonable doubts but only on the touchstone of preponderance of probability, which test in the present case has been met by the respondent nos.1 and 2.

14. I accordingly find no merit in the present appeal. The appeal and the pending application are dismissed. There shall no order as to cost.

15. The statutory amount deposited by the appellant shall be returned to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

SEPTEMBER 21, 2023/Arya/am