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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22.09.2023

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MAC.APP. 442/2023

DHARAMBIR & ANR.

..... Appellants

Through: Mr.Punit Jain, Adv.

versus

LATE SH AVDESH (DECEASED) THR. LRS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 49310/2023 & CM APPL. 49312/2023
(Exemptions)

1. Allowed, subject to all just exceptions.

CM APPL. 49313/2023

2. This application has been filed by the respondent seeking condonation of delay of 10 days in re-filing of the present appeal.

3. For the reasons stated in the application, the delay is condoned and the application is allowed.

CM APPL. 49311/2023

4. This appeal has been filed by the appellants challenging the Award dated 12.12.2022 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT



No.512/2020, titled *Late Sh.Avdesb Kumar (Deceased) through his Legal Heirs v. Sh.Dharambir & Anr..*

5. The present appeal has been filed with a delay of 107 days.

6. The appellants claim that they came to know of the passing of the Impugned Award only when they were served with the summons of the Execution Petition filed by the claimants, on 24.01.2013. The appellants were thereafter advised to challenge the Impugned Award by moving an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (in short 'CPC'). Such application was filed before the learned Tribunal on 17.03.2023, which was, however, dismissed as withdrawn on 07.07.2023 with liberty to file the present appeal. It is stated that in this process there is a delay of 107 days in filing of the present appeal.

7. For the reasons stated in the application, the delay is condoned.

8. The application is allowed.

MAC.APP. 442/2023

9. By the Impugned Award, the learned Tribunal has awarded compensation under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), as was applicable then, in favour of the respondents, who are the Legal Heirs of the deceased-Shri Avdesb Kumar.

10. The above Claim Petition was registered on a Detailed Accident Report (in short 'DAR') filed before the learned



Tribunal, stating that on 08.03.2023 at about 10:20 PM, when Shri Avdesh Kumar was crossing the road near Pillar No. 99 Karol Bagh Metro Station, Delhi, he was hit by the offending vehicle, that is, a motorcycle bearing registration no. DL-3S-DX-5868 driven by the appellant no.1. The deceased was admitted to Ganga Ram Hospital, where during the treatment he succumbed to the injuries on 15.03.2020. FIR No.86/2020 under Section 279/304-A Indian Penal Code, 1860 was registered at Police Station Karol Bagh.

11. The appellants did not file their written statements/replies to the DAR and appeared only once before the learned Tribunal on 26.10.2020. They were, accordingly, proceeded *ex-parte* vide order dated 15.03.2021 by the learned Tribunal.

12. As the appellants have already withdrawn their application under Order IX Rule 13 of the CPC before the learned Tribunal, vide order dated 07.07.2023, I need not detain myself with the submissions of the learned counsel for the appellants that they were wrongly proceeded *ex-parte* during the restricted functioning of the Courts due to Covid-19 pandemic.

13. Even otherwise, I find no merit in the same for the reason that even after the lifting of the restricted functioning of the Courts and the final extension of limitation granted by the Supreme Court in ***RE: Cognizance for Extension of Limitation*** in Suo Moto Writ Petition (Civil) 3/2020, the appellants took no steps to appear or have their say in the Claim Petition heard by



the learned Tribunal.

14. As the claimants also did not appear before the learned Tribunal and no evidence was led for proving the rash and negligent driving of the offending vehicle, the learned Tribunal, by way of the Impugned Award, has considered the Claim Petition under Section 163A of the Act.

15. It was not challenged before the learned Tribunal that the offending vehicle was involved in the accident in question and had hit the deceased resulting in his death. For the said purpose, the learned Tribunal has rightly relied upon the DAR and the MLC of the deceased.

16. Under Section 163A of the Act, as was applicable then, the claimants are not to prove that the offending vehicle was being driven in a rash and negligent manner, causing the accident in question. The said provision, therefore, casts a strict liability on the owner of the motor vehicle which causes death or permanent disablement due to the accident arising out of the use of a motor vehicle.

17. In ***Deepal Girishbhai Soni v. United India Insurance Co. Ltd.***, (2004) 5 SCC 385, the Supreme Court held as under:

“66. ...The Motor Vehicles Act contains different expressions as, for example, “under the provision of the Act”, “provisions of this Act”, “under any other provisions of this Act” or “any other law or otherwise”. In Section 163-A, the expression “notwithstanding anything contained in this Act or in any other law for the time being in force” has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of



Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.”

18. In view of the above, no fault can be found in the learned Tribunal awarding compensation in favour of the respondents by invoking Section 163A of the Act.

19. In view of the above, I find no merit in the present appeal. The same stands dismissed.

20. The statutory amount deposited by the appellants along with interest accrued thereon, shall be transmitted to the learned Tribunal to be released in favour of the claimants/respondents herein in accordance with the schedule of disbursement in the Impugned Award and in partial satisfaction thereof.

NAVIN CHAWLA, J

SEPTEMBER 22, 2023/rv/AS