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

***Date of decision: 11.07.2023***

+ **MAC.APP. 819/2019**

**PRITEE @ PITAMBARI DEVI & ANR**

..... Appellants

Through: Mr.Manish, Adv.

versus

**SHASHI KUMAR & ORS (UNITED INDIA INSURANCE CO LTD)**

..... Respondents

Through: Mr.Sankar N Sinha, Adv. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 30.03.2019 passed by the learned Motor Accidents Claims Tribunal-01, Central, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 616/2017 titled ***Pritee @ Pitambari Devi & Ors. v. Shahsi Kumar & Ors.***, dismissing the Claim Petition of the appellants herein on the ground that the claimants/appellants have been unable to prove that the accident was caused by the Motor vehicle bearing no. DL-8S-BR-4283 (hereinafter referred to as the 'offending vehicle').

2. It is the case of the appellants that on 02.07.2016, appellant no.2 along with his son late Shri Manish had gone to



the Sukhdev Ka Dhaba, Murthal, Sonipat, Haryana for dinner. After finishing their dinner, the appellant no.2 and the deceased were returning home at about 12:30 AM. When they reached the main road in front of the above said dhaba, the offending vehicle bearing no. DL-8S-BR-4283 came at a very fast speed in a rash and negligent manner from the side of Delhi and hit the deceased, consequent whereof the deceased fell down and sustained multiple injuries. The deceased was rushed to the Community Health Center, Gannaur, Sonapat, Haryana, however, he succumbed to his injuries.

3. The respondent no.3, the Insurance Company took a plea that the case being set-up before the learned Tribunal is contrary to the FIR registered, which recorded that the accident had taken place due to the motorcycle bearing no. DL-6S-AK-4460, make Bajaj Discover. The respondent no.3 further took a plea that since the said motorcycle was not insured, the appellants in collusion with the local police and the respondent nos.1 and 2, who are the driver and the owner of the offending vehicle, have falsely alleged that the accident had taken place due to the offending vehicle. The respondent no.3, therefore, denied that the offending vehicle was involved in the accident and consequently pleaded that it was not liable to pay any compensation.

4. Based on the pleadings of the parties, vide order dated 14.11.2017, the following issues were framed by the learned Tribunal:-

“(i) Whether the deceased Manish had died



*of injuries sustained by him in a road accident which took place on midnight of 02.07.2016 & 03.07.2016 within the Jurisdiction of PS Murthal, Sonapat, Haryana, due to rash and negligent driving of vehicle bearing Regn. No. DL-8SBR-4283 by respondent no. 1?*  
*(ii) Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?*  
*(iii) Relief.”*

5. The main issue to be decided by the learned Tribunal was whether the appellants were able to prove that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner. The learned Tribunal after considering the evidence led before it, held that the appellants were unable to prove that the accident had taken place with the offending vehicle.

6. The learned counsel for the appellants challenges the above finding by asserting that the accident had taken place in the middle of the night; the father of the deceased (PW-2) was in a state of shock and could not properly note down the number of the offending vehicle, because of which, the FIR was registered giving the number of vehicle by which the accident was caused as DL-6S-AK-4460 instead of the offending vehicle. He submits that this mistake was later realised and an affidavit of PW-2 was filed with the Investigating Officer (hereinafter referred to as 'IO'). The IO, on a proper investigation, thereafter filed a charge-sheet against the respondent nos.1 and 2, the owner and the driver of the offending vehicle. He submits that the learned Tribunal has,



therefore, erred in dismissing the Claim Petition filed by the appellants.

7. On the other hand, the learned counsel for the respondent no.3 submits that this is a classic case of connivance between the owner of the offending vehicle and the claimant. He submits that the learned Tribunal has given cogent reasons for arriving at a finding that the claimants had been unable to prove that the accident was caused by the offending vehicle and, therefore, dismissing the Claim Petition.

8. I have considered the submissions made by the learned counsels for the parties. The learned Tribunal in its Impugned Award has observed that there is a doubt on the very presence of the father of the deceased (PW-2) at the spot of the accident. For reaching this conclusion, the learned Tribunal relies upon the statement of the PW-3, Mr.Sandeep Kumar, who was the clerk at the Community Health Center, Gannaur, Sonapat, Haryana, and who deposed that the injured was brought to the hospital by the police and no other person, including father of the deceased (PW-2), had accompanied the deceased. The learned Tribunal further placed reliance on the fact that though the FIR was registered on the next day of the accident at about 10:00 AM, the father of the deceased (PW-2), in the statement alleged that the accident was caused by the motor vehicle bearing no. DL-6S-AK-4460, which was of the make Discover. To buttress his statement that the number was correctly recorded by him, PW-2 even went to the extent of saying that the motorcycle stopped at the spot of the accident for a few



moments before fleeing away. The learned Tribunal held that, therefore, at least till that time, there was no confusion regarding the vehicle involved in the accident.

9. The learned Tribunal further held that the IO (R3W3) had also recorded the statement of the respondent no.1, the alleged driver of the offending vehicle, on 03.07.2016 itself, wherein the respondent no.1 had also testified that the accident was caused by the motorcycle bearing no. DL-6S-AK-4460 of make Discover. It was only on 30.07.2016, that the father of the deceased (PW-2) filed an affidavit before the IO stating that the accident had actually been caused by the offending vehicle. The learned Tribunal concluded that since the appellants and the respondent no.1 are resident of F-Block, Mangolpuri, New Delhi, they had colluded together to name the offending vehicle as the one involved in the accident, having discovered that the motorcycle bearing no.DL-6S-AK-4460 was not insured.

10. The learned Tribunal has given a cogent reason for reaching the conclusion that the evidence produced by the appellants was not sufficient to conclude that the offending vehicle was involved in the accident. The learned counsel for the appellants could not show from the record how the above conclusion of the learned Tribunal can be said to be incorrect. The evidence of the parties leads only to the conclusion that the offending vehicle was falsely named by the claimants in connivance with the respondent no. 1, as being involved in the accident in question.



11. I, therefore, find no merit in the present appeal. The same is accordingly dismissed. There shall be no order as to costs.

12. The learned counsel for the claimants at this stage submits that the claimants must be left with the remedy to obtain relief against the other vehicle or by invoking Section 163 of the Motor Vehicles Act, 1988. The appellants are granted such liberty by initiating appropriate proceedings as may be open to them in accordance with law. It is made clear that this court has not expressed any opinion on the merit or maintainability of such proceedings as the appellants may initiate pursuant to the liberty granted.

**NAVIN CHAWLA, J**

**JULY 11, 2023/rv/rp**

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