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

Date of decision: 15.09.2023

(11)+ MAC.APP. 612/2018

NEELAM & ANR

..... Appellants

Through: Mr.S.N. Parashar, Adv.
versus

GAURAV & ANR

..... Respondents

Through: Mr.Rahul Kumar, Adv. for R-1.
Mr.S.G. Goswami, Mr.Aman
Rajput, Advs for R-2.

(12)+ MAC.APP. 726/2018

SHEELA DEVI & ANR

..... Appellants

Through: Mr.S.N. Parashar, Adv.

versus

GAURAV & ANR

..... Respondents

Through: Mr.Rahul Kumar, Adv. for R-1.
Mr.S.G. Goswami, Mr.Aman
Rajput, Advs for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the Award dated 12.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.15337/2015, titled *Neelam & Ors. v. Gaurav &*



Gaurav & Ors., dismissing the claim petitions filed by the appellants herein.

Challenge to the Impugned Award:

2. The limited grievance of the appellants to the Impugned Award is that even if the appellants were unable to prove that the offending vehicle, that is the motor cycle bearing no.DL-5SAK-1579 (Passion Pro), was being driven in a rash and negligent manner by the respondent no.1 herein, the appellants should have been awarded compensation under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act').

Brief background:

3. The claimants had filed the claim petitions contending therein that the deceased, Bunt Kumar and Sonu Kumar, were riding as pillion riders on the offending vehicle being driven by the respondent no.1 herein in a rash and negligent manner. When they reached near 3rd Pushta, Yamuna Khadar, Paltun Pul ke upper near old village Usman Pur, Delhi at about 5:40 A.M., the respondent No.1 lost control of the offending vehicle, due to which the offending vehicle hit the iron pole on the Paltun Pul, resulting in both the deceased falling into the river, and as a consequence of which both of them drowned in the water.

4. The respondent no.1 in his defence had stated that he was not driving the offending vehicle at the time of the accident, and rather was also sitting as a pillion rider. He stated that the offending vehicle was being driven by one Vijay @ Monu.

5. The respondent no.2, who was impleaded as the owner of the



offending vehicle before the learned Tribunal, stated that the alleged offending vehicle has in fact been stolen and FIR No.311/2014 for offence under Section 379 of the Indian Penal Code, 1860 (in short, 'IPC') at Police Station, New Usman Pur had been lodged.

6. In the course of the evidence, the respondent no.1 further relied upon the order dated 01.09.2014 passed by the learned Principal Judge, Juvenile Justice Board-II, Delhi (hereinafter referred to 'Juvenile Justice Board') acquitting him of offences punishable under Sections 279/304A of the IPC and under Sections 4/181 of the Act.

7. Based on the above, the learned Tribunal by its Impugned Award has held that as the claimants had failed to prove that the offending vehicle was being driven by the respondent no.1, leave alone in a rash and negligent manner, and keeping in mind that the vehicle had been stolen, neither of the respondents could be made liable to pay compensation to the claimants. The claim petitions were accordingly dismissed.

Submissions by the learned counsel for the appellants:

8. The learned counsel for the appellants submits that as is evident from the Detailed Accident Report filed by the police before the learned Tribunal, as also from the registration of the FIR and the charge-sheet against the respondent no.1 by the police, the respondent no.1 was driving the offending vehicle. He submits that the respondent no.1 did not file any protest against the registration of the FIR against him and, therefore, it should be presumed that the respondent no.1 was driving the offending vehicle at the time of the accident.



Analysis:

9. I am unable to agree with the submission made by the learned counsel for the appellants. As is noted by the learned Tribunal, the respondent no.1 herein had filed his written statement denying that he was driving the offending vehicle at the time of the accident. He also named one Mr.Vijay @ Monu as the driver of the offending vehicle. Even before the Juvenile Justice Board he maintained that he was not driving the offending vehicle. Before the Juvenile Justice Board, Mr.Yogesh Goyal, an alleged eye-witness of the accident, was examined as PW-1. He in his statement denied having seen the accident and, therefore, could not say who was driving the offending vehicle. The Juvenile Justice Board vide its order dated 01.09.2014, therefore, acquitted the respondent no.1. Before the learned Tribunal, the claimants did not even examine the alleged eye-witness, namely Mr.Yogesh Goyal.

10. Though it cannot be disputed that the onus of proof in a criminal trial, being one of beyond reasonable doubt, is vastly different from one in a claim petition filed under the Act, being one of proof based on preponderance of probability, at the same time, at least, some cogent evidence should have been led by the claimants on their allegation of the respondent no.1 being the driver of the offending vehicle. This was more so as the respondent no.1 not only denied that he was driving the offending vehicle at the time of the accident, but also appeared as a witness before the learned Tribunal contending the same. In his cross-examination, barring putting suggestions that he was deposing falsely, his testimony of not being



the driver of the offending vehicle at the time of the accident and that the offending vehicle was being driven by a third person, could not be shaken.

11. Merely because the respondent no.1 had not filed a protest report against the registration of the FIR against him, cannot be an evidence of his driving the offending vehicle at the time of the accident, especially when he was acquitted of the offences. Each case has to be determined on its own fact.

12. As far as the respondent no.2 is concerned, the respondent no.2 had reported that the vehicle had been stolen prior to the accident. This could also not be disputed by the appellants.

13. In view of the above, though unfortunate, the appellants have failed to prove that the respondent no.1 or the respondent no.2 were liable to pay compensation to the appellants. The learned Tribunal could not, therefore, have awarded compensation to the Claimants even under Section 163A of the Act, and has rightly dismissed their Claim Petition(s). Therefore, I do not find any infirmity in the Impugned Award.

14. The appeals are accordingly dismissed.

15. The learned counsel for the appellants submits that as it is admitted that the deceased had died as a result of motor vehicle accident, the appellants be granted liberty to raise claims before the Delhi State Legal Services Authority for seeking compensation. The appellants shall have such liberty.

NAVIN CHAWLA, J