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

Date of decision: 08.08.2023

+ MAC.APP. 977/2017 & CM APPL. 40609/2017, 40610/2017

DEPUTY COMMISSIONER OF POLICE Appellant

Through: Mr.Kartik Sharma, Adv. for
Mr.Santosh Kr. Tripathi, SC-
GNCTD.

versus

MAMTA & ORS

..... Respondents

Through: Mr.Jatinder Kamra, Adv. for R-
1 to 3.

ASI Praveen Kumar Sharma,
ASI Khalil Ahmed, ASI
Bijender, Parvi Officer/PCR.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 23.12.2016 passed by the learned Motor Accidents Claims Tribunal, Patiala House Courts, New Delhi (hereinafter referred to as the learned 'Tribunal') in MACP no.40/15, Ms. ***Mamta & Ors. v. Sh. Rakesh @ Rakesh Kumar & Anr.***

2. The learned Tribunal in the Impugned Award has given the narration of the accident as under:

"2. Brief facts of the case are that on 24.12.2014 Sh.Suresh Chand(since deceased) was going on his motorcycle bearing no.DL-



14 5S-9818 and at about 3.55 PM when he reached North Avenue Road, PS Parliament Street, New Delhi the PCR bearing no.DL-1CM-7429(hereinafter called as. offending vehicle) being driven in rash and negligent manner by R-1 hit the motorcycle of deceased due to which he fell down and sustained injuries. He was taken to Dr.RML hospital where he expired during the course of treatment on 25.12.2014.”

3. The Claim Petition was registered on the Detailed Accident Report in case FIR No.299/2014 filed by the police on 26.02.2015. The learned Tribunal, based on the evidence led before it, held that the claimants, that is the respondents herein, had been able to prove the negligence on the part of the respondent no.5 herein/driver of the PCR/Offending vehicle.

4. The learned counsel for the appellant submits that the learned Tribunal has erred in not attributing any contributory negligence on the deceased. He submits that it had come on record before the learned Tribunal that the deceased was driving the motorcycle at a high speed, while on the other hand, the offending vehicle was answering an emergency call. He submits that, therefore, contributory negligence should have been attributed on the deceased while determining the compensation payable. He submits that the deceased who was on a motorcycle, was not wearing a helmet. Therefore, again the learned Tribunal has erred in not attributing contributory negligence on the deceased.

5. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that Mr.Adesh Gupta (PW-3), eye witness to the accident, clearly stated that the accident occurred due to the offending vehicle



being driven in a rash and negligent manner. No suggestion was given to the said witness that the deceased was not wearing a helmet at the time of accident. In fact, this was not the case pleaded or set up by the appellants before the learned Tribunal. He further submits that the police itself has registered the charge-sheet against the respondent no.5 under Sections 279/304-A of the Indian Penal Code, 1860 (in short 'IPC'), thereby admitting the version of the respondent nos.1 to 4 that the accident and the consequential death of the deceased occurred due to the offending vehicle being driven in a rash and negligent manner.

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

7. To a query of this Court whether any evidence was led by the appellant before the learned Tribunal of the deceased not wearing a helmet at the time of accident, the learned counsel for the appellant fairly submits that no such evidence was brought on record. In the absence of any such evidence, the plea of the appellant that the deceased was not wearing a helmet at the time of accident, cannot be believed and accepted.

8. On the issue of the deceased having contributed to the accident by his own rash and negligent driving, ASI Tasvir Singh, who was the In-charge of the offending vehicle/PCR van, stated that the accident had occurred because the offending vehicle was being driven at a high speed. He does not state that the deceased in any manner had contributed to the accident on account of his driving, though he does

state that the motorcycle was also being driven at a high speed by the



deceased. 'High Speed' here may not necessarily mean exceeding the speed limit or contributing to the accident. Even the PW-3 in his statement, has not attributed any contributory negligence on the deceased.

9. In the absence of any such evidence to the contrary, and in view of the fact that the police itself has registered a charge-sheet against the respondent no.5 under Sections 279/304-A of the IPC, the assertion of the appellant that the deceased had contributed in the accident cannot be accepted.

10. I therefore, find no merits in the present appeal. The same is dismissed.

11. The amount deposited by the appellant before the learned Tribunal along with interest accrued thereon be released in favour of the respondent nos.1 to 3, the surviving claimants, who also claim to be the only legal heirs of the respondent no.4, as recorded in the order dated 14.02.2020 of this Court.

12. The statutory amount deposited by the appellant shall be released to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 8, 2023/Arya/am

[Click here to check corrigendum, if any](#)