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

+ **MAC.APP. 237/2021**

SOHANVEER SINGH TOMAR & ANR.Appellants

Through: Mr. Sushil Kumar and Ms. Tamanna,
Advocates.

versus

VIJAY SINGH & ORS.Respondents

Through: Counsel for respondents (appearance
not given)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

24.10.2024

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1. The Appeal under Section 173 of the Motor Vehicle Act has been filed on behalf of the Claimants, to challenge the impugned Award/Judgment dated 26.08.2020 vide which the learned Tribunal had dismissed their Claim Petition on the ground that the rash and negligent driving on the part of the offending vehicle, could not be established.

2. Briefly stated, according to the Claimants on 06.08.2017 at about 2:30 p.m, the deceased, Mr. Arjun Tomar was going on his motorcycle bearing No. 3SDF 8996, on the Delhi Saharanpur road. When he reached near Rambagh, Loni, the offending vehicle (tractor) bearing No. DL 1E 2413, came from the wrong side and hit the motorcycle and he suffered injuries. He was taken to Primary Health Centre and Hospital, Loni from where he was shifted to Sushruta Trauma Centre, Delhi, where he was declared



“Dead” by the doctors.

3. An FIR No. 0773/2017 under Section 279/304A IPC, Police Station Loni, Ghaziabad was registered on 10.08.2017, after four days, against the offending vehicle. Investigations were carried out and the Charge Sheet was filed against the respondent No. 1/driver, Mr. Vijay Singh.

4. The Appellants/Claimants filed the Claim Petition under Section 166 and 140 of the Motor Vehicle Act.

5. The respondent Nos. 1 and 2/driver/owner admitted in their Written Statement that the vehicle was being driven by the respondent No. 1, Mr. Vijay Singh but it was asserted that he was driving the vehicle slowly, in accordance with the Traffic rules. The road was broken and it could not have been driven at a high speed or in a rash and negligent manner. It was further stated that they are not liable to pay the compensation as the vehicle is fully insured with the Insurance Company.

6. **The Respondent No. 3 in his Written Statement** had admitted that the offending vehicle was insured with the Insurance Company. It was, however, claimed that the FIR was registered on 10.08.2017 against an unknown vehicle after four days and this vehicle has been subsequently implicated.

7. The evidence was recorded before the Tribunal and the Claimants examined one eye witness, PW-2, Mr. Satish. However, the learned Tribunal disbelieved the testimony of the eye witness and held him to be a planted witness and consequently, held that the rash and negligence on the part of the offending vehicle was not established.

8. Aggrieved by dismissal of the Claim Petition, the Claimants have preferred the present Appeal.



9. **Submissions heard.**

10. The accident occurred on 06.08.2017 at about 2:30 p.m, when the offending Tractor Trolley hit the motorcycle driven by Mr. Arjun Tomar because of which he sustained injuries, which proved to be fatal. PW-2, Mr. Satish Kumar in his testimony expressly stated that the Tractor Trolley was being driven in a rash and negligent manner, on the wrong side of 80 foot road and had hit the motorcycle with full force leading to the accident. After the accident, offending Tractor fled from the spot.

11. The learned Tribunal has disbelieved the involvement of the offending vehicle, which is contrary to the admissions made by the respondent Nos. 1 and 2 in their Written Statement, who have admitted the involvement of the offending vehicle in the accident. The only defence that has been set up was the driver was that he was driving the vehicle cautiously. Whether the vehicle was driven with due care and caution, is a matter of interpretation from the surrounding circumstances.

12. **PW-2, Mr. Satish Tomar**, who is also a cited witness in the Charge Sheet, had categorically deposed that the Tractor Trolley had come from the wrong side of the road. He may have approached the police or the Claimants after four days, but that in itself is no ground to disbelieve his testimony.

13. In addition, reference may also be made to the documents filed along with the Charge-Sheet. The Site Plan, Ex.PW-1/3 clearly corroborates that the Tractor Trolley had come from the wrong side of the road. This in itself is sufficient to prove the negligence on the part of the driver. Significantly, the other material witness was the driver himself who though had appeared before the learned Tribunal, chose not to step into the witness box.

14. The Tractor Trolley may have been traced after about four days, but



the said fact is insignificant especially when the driver/owner has admitted that the driver was driving the vehicle cautiously as the road was broken.

15. The testimony of PW-2 which is corroborated by the documents filed along with the Charge Sheet, fully established the negligence on the part of the offending vehicle in causing the accident. The learned Tribunal fell into error in microscopically examining the testimony of PW-2 and the documents filed along with the Charge Sheet. It is, therefore, held that the negligence on the part of the offending vehicle is duly proved and the impugned Award is hereby set-aside. The parties are directed to appear before the learned Tribunal on 21.11.2024 for adjudication on the compensation, in accordance with law. The parties shall make endeavour to complete their respective evidence within nine months.

16. The Petition is disposed of accordingly.

NEENA BANSAL KRISHNA, J

OCTOBER 24, 2024/RS