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

% *Date of decision: 08th October, 2024*

+ **MAC.APP. 101/2022 & CM APPLs. 15506/2022, 15507/2022**

ASHISH AZAD

.....Appellant

Through: Mr. Mahesh Thakur, Advocate
through VC.

versus

THE NATIONAL INSURANCE COMPANY LIMITED & ORS.

.....Respondents

Through: Mr. Aditya Singh & Mr. Aditya
Kumar, Advocates for R-1.
Ms. Drishti Mittal, Advocate for R-2
through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the *Appellant-driver/ Ashish Azad* to challenge the Judgment and Award dated 26.07.2019 *to the extent of the recovery rights granted against him.*
2. The sole ground for challenge to the Award dated 26.07.2019 is that the Appellant was not the driver of the offending vehicle, as has been wrongly held in the impugned Judgment and Award dated 26.07.2019.
3. It is submitted that thought the Chargesheet has been filed against him, but the trial is still ongoing. There is no finding of any Court that the Appellant was the driver of the offending vehicle.



4. *The appellant-driver submitted* that the learned Tribunal has placed reliance on the testimony of *PW-1 Nirmal Sharma*. However, PW-1 has merely deposed about the presence of the driver on the spot, when in fact, the appellant was not the driver, but was only the passenger in the offending vehicle.

5. It is further claimed that the accident took place on the rough road where there was no traffic signal line. Further, the accident was caused on account of the negligence of an unnumbered truck which came from the wrong side at a high speed and hit the alleged offending Vehicle Number (Nano car) DL 9C Z 2891, which was being driven by the brother of the Appellant/Ashish Azad, who lost control and hit the motorcycle, thereby injuring the driver and the pillion rider of the motorcycle. Moreover, though the vehicle was being driver by his brother, but the appellant has been made an accused as his brother had run away from the spot. It has also not been appreciated that there was no negligence on the part of the driver of the alleged offending vehicle.

6. The learned Presiding Officer, MACT has also failed to appreciate that the Appellant is a man of no means as he is only a student. His father had died in 2016 and the mother is suffering from various health problems. Due to the financial crisis, the appellant had to stop his studies and search for work to earn the livelihood. In these circumstances, the appellant cannot afford to pay the compensation amount.

7. It is, therefore, submitted that the impugned Award dated 26.07.2019 awarding recovery rights against the appellant-driver may be set aside to the said extent.

8. **Submissions heard.**



9. The present Appeal has been preferred by the driver who has sought his exoneration from the liability to pay the compensation on the ground that *he was not the driver of the offending vehicle*. His defence is that his brother was driving the vehicle at the time of accident, but he ran away from the spot immediately after the accident and he, who was travelling with him in the vehicle, was apprehended as the driver of the offending vehicle.

10. The Ld. Tribunal referred to the testimony of *PW-1 Nirmal Sharma* who was injured in the same accident, who had deposed that on 29.12.2016 at about 12:45 P.M the motorcycle was being driven by Pramod Kumar Tripathi, the deceased while he was the pillion rider and both were wearing their helmets. Suddenly, the Car bearing No. DL 9C Z 2891 i.e. the offending vehicle which was being driven by the Appellant, Ashish Azad, came from the opposite side on the wrong side of the road and hit their motorcycle at a high speed, consequent to which he suffered injuries while the pillion rider Pramod Kumar Tripathi died on the spot. The FIR No. 632/16 dated 29.12.2016 under S. 279, 337, 304A IPC was registered. Thereafter, Detailed Accident Report (DAR) along with the Chargesheet, FIR, Site Plan, photographs and other requisite documents were filed in the Court.

11. The learned Tribunal also referred to the FIR which was registered on the statement of Sh. Kirti Dev Tanwar who had stated the facts as had been deposed by PW-1 Nirmal Sharma, before the Tribunal. Reference was made to the Site Plan which clearly depicted that the offending vehicle had come on the wrong side of the road and hit the motorcycle. The photographs also corroborated the testimony of PW-1. The Ld. Tribunal on the basis of all the evidence rightly concluded that the vehicle was being driven by the



Appellant Ashish Azad in a rash and negligent manner.

12. Though the driver/appellant has asserted that he was only travelling in the offending vehicle which was being driven by his brother, but he has failed to step into the witness box during the trial before the learned Tribunal. Aside from making a bald assertion, there is no cogent evidence produced by him to prove his defence. Moreover, the FIR has been admittedly registered against him and after due investigations the Chargesheet has also been filed against him. There is not a single document or a Protest Letter ever filed on behalf of the Appellant to assert that he has been implicated falsely in this case.

13. To conclude, aside from making assertions in the present Appeal that he was not the driver of the offending vehicle, no cogent evidence has been led on behalf of the Appellant. From the submissions made on behalf of the Appellant, it is evident that he has set up this defence because he is not in a position to pay the compensation amount.

14. There is no infirmity in the impugned Award holding the Appellant as the driver of the offending vehicle at the time of the Accident.

15. The Appeal is without merit and is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 8, 2024/va