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

+ **MAC.APP. 166/2024, CM APPL. 16472/2024 (stay)**

MS NATIONAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Hetu Arora Sethi, Adv.

versus

SMT ANSHUL VERMA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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18.03.2024

CAV 132/2024 (caveat)

1. Despite advance notice, none appeared on behalf of the caveator/respondents No.1 to 5/claimants.
2. The caveat petition stands disposed of.

CM APPL. 16473/2024 (exemption)

3. Allowed, subject to all just exceptions.
4. The application stands disposed of.

CM APPL. 16474/2024 (delay of 64 days in filing)

5. For the reasons stated in the application and in the interest of justice, the same is allowed. The delay of 64 days in filing the present appeal is condoned.
6. The application stands disposed of.

MAC.APP. 166/2024

7. In the present appeal filed under Section 173 of the Motor Vehicles Act, 1988¹, the appellant/Insurance Company is assailing the

¹ M.V. Act



impugned judgment-cum-award dated 17.10.2023 passed by the learned Presiding Officer, MACT, South District, Saket, New Delhi², primarily on the grounds that firstly, there was a delay in lodging of the FIR regarding the accident; and secondly, that PW-2/Vishal Kumar, who was cross-examined as an eye-witness, was a planted witness.

8. Shorn of unnecessary details, the claimants being the wife, two children, mother and brother of the deceased Jagbir Singh, instituted a claim petition under Section 166 read with Section 140 of the M.V. Act seeking compensation on account of the death of Jagbir Singh who succumbed to injuries in a motor accident that occurred on 26.10.2019 at around 10 AM allegedly involving the offending vehicle bearing registration No.DL-9CH-2951 belonging to respondent No.6/Firoz Akhtar and being driven by respondent No.7/Bal Krishan Upadhyay.

9. The claim petition was contested by the appellant/Insurance Company by filing a written statement and *inter alia* agitating that although the FIR had been lodged by the brother of the deceased five days after the accident, the registration number of the offending vehicle was not indicated in the FIR. The offending vehicle was evidently insured by the appellant/Insurance Company for third-party risks for the period from 06.02.2019 to 05.02.2020.

10. Suffice to say that the learned Tribunal framed an issue as to whether the deceased Jagbir Singh sustained fatal injuries involving the offending vehicle driven by the respondent/driver in a rash and negligent manner. The said issue was decided in favour of the

² Tribunal



claimants holding that the respondent/driver was guilty of rash and negligent driving of the offending vehicle.

11. Having heard the learned counsel for the appellant/Insurance Company and on perusal of the record, at the outset, this Court finds that the present appeal is bereft of any merits. Although PW-1/Smt. Anshul Verma i.e. the wife of deceased, was not an eye-witness to the motor accident, PW-2/Vishal Kumar was examined as an eye-witness and it would be expedient to reproduce his testimony recorded by the learned Tribunal, which goes as under:

“15.11.2022

PW-2: Sh. Vishal S/o Sh. Suresh Chand, aged about 24 years, R/o Nagla Madhau, Kanu Nangla Darvar, Aligarh, Uttar Pradesh - 202123.

On SA

I hereby tender my affidavit in evidence which is Ex.PW-2/1 bearing my signature at point A and B. I rely upon the following documents:

Ex. PW - 2 / A is the copy of the aadhar card (OSR)

xxxxxx by Sh. Kumar Alok, Ld. Counsel for the Insurance Company.

I have not been summoned by the Court. I have been asked to depose before the Court by the Petitioner. I am the eye witness to the accident. I had gone to get my vehicle repaired and I was standing at a distance of 10 feet away from the place of accident. The deceased was standing alongside the road along with his motorcycle. The deceased was talking on phone. The road was single road and there is no divider on the road. The deceased was standing on the road not along side the road. It is wrong to suggest that since the deceased came on the road while talking to someone on his mobile phone and did not realize the traffic on the road and due to this he met with an accident. It is wrong to suggest that due to his own negligence, deceased died in the accident. The driver of the offending vehicle fled from the spot after hitting the deceased. I had noted down the registration number of the offending vehicle



immediately in my mind and later on I noted it on the paper. I had not taken the deceased to the hospital. I called the police and police had reached the spot within twenty-thirty minutes after the accident. I did not tell the registration number of the offending vehicle to the police when the police came on the spot. Police had called me after one week of the accident to appear before the police station. It is correct that I had not told the registration number of the offending vehicle to the police for one week of the accident. (Vol. I had told the brother of the deceased about the number of the offending vehicle when I was called for appearing in the police station). It is correct that neither I had informed about the offending vehicle to anyone for a week nor I lodged FIR nor I accompanied the deceased to the hospital. The age of the deceased might be 40-45 years. I am not known to the deceased by anyway. It is wrong to suggest that I have not witnessed the present accident and for this reason I have not told the police about the offending vehicle. It is wrong to suggest that I have come to depose before the Court in order to help the victims in getting the compensation. Police had recorded my statement in the police station, however, I do not remember whether I had signed any paper or not. It is correct that there is no statement found on record filed by the petitioners. It is wrong to suggest that I am depositing falsely.

RO&AC”

12. A careful perusal of the aforesaid testimony would show that the presence of the witness at the spot was not questioned and PW-2 categorically deposed that he had seen the offending vehicle hitting the victim/pedestrian and the driver of the offending vehicle fled away from the spot after hitting the deceased. Although the testimony does suffer from some embellishments inasmuch as the conduct of the witness in not revealing the registration number of the offending vehicle to the police at the first available opportunity, does not strike to common sense and even his version that he has disclosed the registration number of the offending vehicle to the brother of the deceased is belied from the fact that the registration number of the offending vehicle was not disclosed at the time of registration of the FIR by the brother of the deceased. However, what stares on the face



of the record is that the accident had occurred on 26.10.2019, whereas the witness was examined after almost three years i.e. on 15.11.2022 and the testimony of the witness might have suffered from a lapse in his memory.

13. All said and done, the appellant/Insurance Company cannot derive any advantage as it was incumbent upon them to lead evidence, at least by calling the Investigating Officer and seeking his version as to why the registration number of the offending vehicle was not indicated in the FIR or as to on what basis, the investigation arrived at a conclusion that it was the offending vehicle which was involved in the accident. It goes without saying that the proceedings under the M.V. Act are “summary in nature” and the evidence is not to be recorded and appreciated with all the technicalities of law of Evidence. Mere delay in lodging of the FIR and non-mentioning of the registration number of the vehicle in the FIR may not, by itself, afford a defence unless evidence is brought on the record that the claim was collusive or the witnesses have been planted so as to falsely implicate the involvement of the offending vehicle. The appellant/Insurance Company did not even deem it fit to summon the driver of the offending vehicle. Indeed, the registered owner and the driver did not contest the matter and had been proceeded *ex-parte* but then nothing precluded the appellant/Insurance Company from summoning the driver and/or the registered owner so as to substantiate that no accident had taken place with their vehicle.

14. In the said backdrop, no blemish could be found in the approach of the learned Tribunal in relying upon the documents with regard to the accident in question from the investigation done pursuant to the lodging of FIR bearing No. 0187/2019 under Sections 279/338/304-A



of the Indian Penal Code, 1860 with PS Gonda.

15. In view of foregoing discussion, the present appeal is dismissed *inlimine*.

16. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 18, 2024/ck