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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 26th November, 2024***+ **MAC.APP. 393/2022 & CM APPL. 24366/2023****NARENDER SINGH****.....Appellant**Through: **Mr. Yash Kumar, Advocate.****Versus****SHEELA DEVI & ORS.****.....Respondents**Through: **None.****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 (hereinafter referred to as 'MV Act, 1988')* has been filed by the Appellant/Driver challenging the impugned Award dated 04.08.2022 *vide* which the Driver and the Registered Owner of the offending vehicle were jointly held liable.

2. ***Briefly stated***, on 25.12.2017 at around 07:30 PM, the driver of Auto Number DL-1RD-3092, due to his ill health, parked the vehicle on the roadside to take rest. In the meantime, the offending vehicle i.e. Maruti Car bearing No. HR-69C-7035, driven by the Appellant-Narender Singh, came at a high speed in a rash and negligent manner and crushed him under his wheel and fled from the spot.

3. FIR No.870/2017, under Sections 279/304A IPC was registered at

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Police Station Ranhola, Delhi. After completion of investigation, DAR was filed before the learned Motor Accident Claims Tribunal (*hereinafter referred to as 'MACT'*). In the investigations, it was found that the offending vehicle did not have any Insurance.

4. No Written Statement was filed by the registered owner, namely, Vikas Chahal.

5. After recording of the evidence of the parties, the *learned Tribunal granted compensation in the sum of Rs.21,59,752.66/- along with interest @6% per annum, from the date of DAR till payment of the amount.* The compensation was directed to be paid jointly by Appellant-driver- Narender Singh and the registered owner-Vikas Chahal.

6. *Aggrieved by the impugned Award, the Appellant Narender Singh, has filed the present appeal.*

7. The *grounds* of challenge in the present Appeal are that the learned Tribunal has erroneously relied upon the testimony of so called eye witness PW-1-Rampal, even though he had resiled from his statement before the learned Metropolitan Magistrate (*hereinafter referred to as 'MM'*) as well as before the learned Presiding Officer, MACT.

8. It was further contended that the learned Tribunal has not appreciated that the Appellant had examined independent witness R1W1-Laxman, from whose deposition it is clear that at the time of the accident, the Appellant was not present at the crime spot. Rather, he was attending the birthday of his elder brother and was present at home. It is urged that no negligence is established from the oral and documentary evidence on record, despite which the Appellant has been held responsible to pay the compensation. The decision of the learned Tribunal is claimed to be based upon premises and



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conjecture, is therefore, the impugned Award is liable to be set aside.

9. Submissions heard and record perused.

10. Late Shri Talewar Singh had died in an accident which took place on 25.12.2017 when he was allegedly run over by the offending Maruti Dezire car bearing No. HR 69C 7035, driven by the Appellant. The legal heirs of the deceased, i.e. his widow wife, son and three daughters, filed their Claim before the learned Tribunal.

11. The primary witness examined by the Claimants to prove the negligence of the offending vehicle, was PW1- Rampal, the eye-witness of the accident who deposed that on the day of the accident, he had seen a person lying on the road and vomiting, who was unable to walk. One Maruti Dezire car bearing Haryana Number came at a high speed and overturned the head of the deceased under its wheels. Though this witness did not give the complete registration number of the car, but he stated that the car was having initials 70 and was coming at a fast speed. He called the PCR on Number 100. The police arrived at the spot and took the injured to the hospital. He stated that he had recorded the video of the incident from his mobile phone in which the registration number was visible and had shown it to the police. FIR was registered on his statement recorded in the Police Station.

12. This witness, PW1 was extensively cross-examined on behalf of the Appellant-Driver and the Owner of the offending vehicle before the Court of learned MM, wherein he categorically stated that *“the offending vehicle registration No. HR 69C 7035 arrived at the spot from the side of Vikaspuri which was taking a turn towards Karbal Bhatia Road near Murga Farma House, Shiv Vihar, Delhi. The road was adjacent to a nala and if a person*



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does not take turn, he would go to Dwarka Mor.” He admitted that he had not made a call to PCR at Number 100, as his mobile phone was discharged and somebody else had called the police. He also stated in his cross-examination that the PCR had arrived at the spot after about 20 minutes to half an hour of calling at Number 100. No ambulance had come to the spot and the injured was taken to the hospital in police gypsy.

13. The eye witness, PW1 admitted that he did not go to the hospital in the PCR with the victim and that Appellant-Narender Singh was not arrested in his presence. He denied that he had any personal enmity with Respondent No.2-Chandan Singh, who is the purchaser of the offending vehicle, who was President of the locality, as he was supplying electricity in the area after purchasing the same from private Discom. He also denied that he had not seen the Appellant-Narender Singh causing the accident. Another witness, Vijay was examined as PW-4 before the Learned MM. However, the witness turned hostile and did not support the case of the Claimants. Consequently, no further examination of the said witness was undertaken before the learned Tribunal.

14. The main argument on behalf of the Appellant is that, the testimony of the eye witness was held not reliable by the learned MM in the criminal case. The learned MM has observed that eye witness PW-1-Rampal as well as second eye witness PW-4-Vijay, had failed to identify the accused and thus, acquitted the Appellant. Once the Court of competent jurisdiction has already held that the Appellant was not involved in the accident, the Tribunal has fallen in error in implicating the Appellant as the perpetrator of the accident.

15. In his statement recorded under *Section 161 Cr.P.C.* before the IO as



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well as report under *Section 173 Cr.P.C.* , eye witness PW-1-Rampal has mentioned the registration number of the vehicle which caused fatal injuries on the body of the deceased. Further, in terms of *Rule 7 of the Motor Accident Tribunal Rules, 2008*; the report under *Section 173 Cr.P.C.* and its annexures are admissible.

16. The learned Tribunal in Paragraph-18 of the impugned Judgment has taken note of the Order dated 08.05.2019 passed by the learned MM, narrating how the accident had taken place, which reads as under:-

*“I am a Taxi Driver by profession and on the date of the incident, I was coming after eating my meal on my Taxi bearing registration number no. DL-1RT-5939. At that time, I was coming from the side of Vikaspuri and was going towards my house Ranhola. On the abovesaid time, one auto driver suddenly fell out of the auto and his auto suddenly stopped. I stopped my car and attended the said driver. He was unconscious and **“uske muh se jhaag aa rahe they”**. I made a 100 number call and informed to the police officials. In the meantime, one car bearing registration number HR-69C 7035 arrived at the spot from the side of Vikaspuri which was taking a turn towards Karbal Bhatia Road near Murga Farma House, Shiv Vihar, Delhi. I made a signal to the driver of the abovesaid car to stop his car but the driver of the car did not stop his car and the said offending car ran on the head of the auto driver. The auto driver started bleeding profusely. The driver of the offending vehicle fled away from the spot along with his car. Some public person made a 100 no. call on which the police officials arrived at the spot. The police officials removed the auto driver to DDU hospital. I narrated the whole incident to the police officials.”*

17. It is evident from the Judgment of the learned MM dated 31.10.2019 *vide* which Appellant has been acquitted, that the eye witness PW-1-Rampal



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had been put leading questions by the learned Public Prosecutor, which were to the effect that he did not remember the exact date of incident or that whether he had taken his meal or was going to have his meal. He also could not remember that he had identified the Appellant in the Police Station.

18. The learned MM considered these aspects as the eye witness not supporting the case of the prosecution and declared him hostile and acquitted the Appellant. However, it has also been observed by the learned Tribunal that based on these aspects, though the eye witness has been termed as hostile, but it does not in any way disprove the accident cause by the Appellant. The learned Tribunal has rightly concluded that the accident was caused due to rash and negligent driving of the Appellant.

19. *Further*, it is not denied that FIR No. 870/2017 had been registered against the Appellant and after due investigation and the Chargesheet was also filed. At no point of time the Appellant took the plea of false implication. The eye witness may have not supported the case of the prosecution in his testimony with regard to the identity of the accused, but merely because eye witness had turned hostile before the Magistrate, would not in any manner mitigate the credibility of the witness and his testimony recorded before the Court.

20. Pertinently, no complaint was made to any authority nor any defence was set up against the FIR registration. The eye-witness was consistent in his testimony before the Tribunal, not only in describing the manner of accident, but also about the identity of the Driver. Even in the cross-examination of the witness before the learned Tribunal, only a bald suggestion has been given to the Appellant that he has not caused the accident.



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21. In the case of National Insurance Co.,vs Pushpa Rana, 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, that if the Claimant was able to prove the criminal case on record pertaining to involvement of the offending vehicle, whereby the criminal records showing completion of investigation by the police and filing of chargesheet under Sections 279/304-A IPC against the driver have been proved, then the documents mentioned above are sufficient to establish the fact that the driver was negligent in causing the accident. Where FIR is lodged, Chargesheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Similar observations have been made in the cases of Jamanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022.

22. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that the key-point of negligence of the driver as set up by the Claimants is required to be decided on the touchstone of preponderance of probabilities and not by the standard of proof beyond reasonable doubt. Thus, filing of chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. The subsequent acquittal of the accused may be of no effect on the assessment of the liability required in



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motor vehicle accident cases.

23. Further, the acquittal of the Driver in a Criminal Case cannot be a ground for dismissal of the Claim before the Accident Tribunal, as has been held in the cases of N K V Bros (P) Ltd. vs. M. Karumal Ammal, 1980 LawSuit (SC) 141; Delhi Transport Corporation & Anr. Vs. Navjyot Singh & Ors., 2015 LawSuit (Del) 1750 and National Insurance Company Ltd. vs. Sarbjit Kaur & Ors., 2018 LawSuit (P&H) 1711.

24. To prove the contrary, the Appellant got himself examined as R1W2, and a public person, namely, Lakshman was examined as R1W1.

25. R1W1 Lakshman deposed before the Court that he knew Appellant-Narender for last many years. On 25.12.2017, he had gone to purchase a cake on the occasion of birthday of Narender's elder brother from "Do Bhaiyon Ki Dukan". After purchasing the cake, he along with Narender returned back home at around 7-8 PM. In his cross-examination, he denied that the accident in question was caused by him.

26. The appellant, Narender examined himself as R1W2 and deposed on similar lines as R1W1 Lakshman. In his cross-examination on behalf of the Claimants, he admitted that the FIR in question was registered against him and his driving license was seized by the police after about two months and that he was formally arrested on 12.02.2018 and was thereafter released on bail. He admitted that the Affidavit Ex.R1W2/P-1 was signed by him but the same was got signed by him by the IO of the case and its contents were not known to him. He denied that he was driving the vehicle under the influence of liquor or that the deceased died in the accident caused by him.

27. No cogent evidence has been led by him to prove plea of *alibi* of not being present at the scene of crime.



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28. In view of the above, it is concluded that the enquiry under the *MV Act, 1988* and the testimony of the eye witness was cogent and comprehensive, clearly implicating the Appellant-driver as the preparator of the crime, which is duly supported by the investigation conducted in the criminal case.

29. There is *no ground for interference* in the impugned Judgment.

30. The Appeal is hereby dismissed. Pending Application(s) are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 26, 2024

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