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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1889/2023 & CM APPL. 59295/2023 (stay)

DEEPAK YADAV Petitioner
Through: Mr. Siddharth Singh, Advocate.

versus

SANGEETA & ORS. Respondents
Through: Mr Chaman Sharma, Adv. for
R-1 and R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
22.01.2024

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1. Petitioner, who is respondent No.1 and purportedly the driver of the offending vehicle is assailing the impugned order dated 01.11.2023 passed by learned Presiding Officer, MACT-02, Shahdara, Karkardooma.
2. Having heard the learned counsels for the parties present, there is no doubt that this claim petition has a chequered history and petitioner/respondent No.1 who was initially proceeded *ex-parte*, later on moved an application whereby the *ex parte* order dated 11.12.2019 was recalled.
3. The controversy in the present revision arises from an application under Order XVIII Rule 17 CPC that has been moved on behalf of petitioner/respondent No.1 seeking two fold reliefs: firstly, to allow recall of PW-1/claimant i.e. the LR of the deceased for cross-examination and; secondly, to allow respondent No.1/driver to lead evidence.



4. Learned counsel for the respondents/LRs of respondents No.1 to 3/deceased has pointed out that initially as per the DAR report, the present petitioner Deepak Yadav was driving the offending vehicle but now a case is being sought to be put that it was one Sarvan Kumar who was driving the offending vehicle.

5. Be that as it may, the findings of the Court in criminal matter shall not be binding on the MACT. So far as the impugned order dismissing the relief for recalling of PW-1/claimant is concerned, it does not call for any interference since it is evident that sufficient opportunities had been granted to the petitioner/respondent No.1 to cross-examine the witness but the same were not availed of.

6. However, the petitioner/respondent No.1 wants to come in the witness box and examine himself. Needless to state that once he is allowed to come in the witness box, it would be open for the learned counsel for the respondents/LRs of Respondents No.1 to 3/deceased to cross-examine the witness and make an attempt to elucidate the truth as to how the accident occurred.

7. Therefore, in the totality of the facts and circumstances of the case, the impugned order dated 01.11.2023 is partly set aside directing that the petitioners shall be allowed to lead their evidence, subject to be cross-examined by learned counsel for the claimant.

8. Accordingly, the claim petition alongwith pending application is disposed of. It is made clear that nothing contained in this order shall tantamount to an expression of opinion on the merits of the case.

9. Copy of this order shall be sent to learned Presiding Officer, MACT-02, Shahdara, Karkardooma with a direction to ensure that not more than one opportunity is granted to the petitioners i.e. Deepak and R.U. Yadav to lead their evidence on a date convenient to the learned



MACT as well as to the counsels for the parties.

10. Since the offending vehicle was not insured for third party risks, the amount of cost of Rs. 50,000/- deposited in the Registry of this Court by the petitioners shall be subject to the final outcome of the decision of the learned MACT.

DHARMESH SHARMA, J.

JANUARY 22, 2024/ck