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- \* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
- + MAC.APP. 617/2018  
AFSANA @ AFSANA KHAN ..... Appellant  
Through: Mr. Shekhar Aggarwal and Mr. Ishan Kumar, Advs.
- versus  
ATIB NISHAR & ORS (SREE RAM GENERAL  
INSUARANCE CO LTD ) ..... Respondents  
Through: Mr. Rabul Mohod and Mr. G.D. Goswami, Advs. for R-1 and R-2
- 53
- + MAC.APP. 619/2018  
NASHREEN KHAN ..... Appellant  
Through: Mr. Shekhar Aggarwal and Mr. Ishan Kumar, Advs.
- versus  
ATIB NISHAR & ORS (SHREE RAM GENEARAL  
INSUARANCE CO LTD ) ..... Respondents  
Through: Mr. Rabul Mohod and Mr. G.D. Goswami, Advs. for R-1 and R-2
- 54
- + MAC.APP. 624/2018  
MUSTKIM KHAN ..... Appellant  
Through: Mr. Shekhar Aggarwal and Mr. Ishan Kumar, Advs.
- versus  
ATIB NISHAR & ORS (SHREE RAM GENERAL  
INSURANCE CO LTD ) ..... Respondents  
Through: Mr. Rabul Mohod and Mr. G.D. Goswami, Advs. for R-1 and R-2
- 55
- + MAC.APP. 625/2018  
BISMILLA & ORS ..... Appellants  
Through: Mr. Shekhar Aggarwal and Mr. Ishan Kumar, Advs.



versus

ATIB NISHAR & ORS (SHREE RAM GENERAL  
INSURANCE COMPANY LIMITED) ..... Respondents

Through: Mr. Rabul Mohod and Mr. G.D.  
Goswami, Advs. for R-1 and R-  
2

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

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**26.02.2024**

**CM APPL. 11571/2024 (For Additional Evidence) in MAC.APP.  
617/2018**

**CM APPL. 11596/2024 (For Additional Evidence) in MAC.APP.  
619/2018**

**CM APPL. 11602/2024 (For Additional Evidence) in MAC.APP.  
624/2018**

**CM APPL. 11587/2024 (For Additional Evidence) in MAC.APP.  
625/2018**

1. None appeared on behalf of respondent No.3/Shree Ram General Insurance Company Ltd., except for the learned counsel for respondents No.1 and 2 in the above-noted four cases.
2. The present above-noted applications have been moved on behalf of the respective appellants/claimants seeking to adduce additional evidence in terms of Order 41 Rule 27 of the CPC. No reply is filed despite advance notice nor the same is required.
3. The aforesaid applications are moved in the backdrop that the claim petitions filed by the respective appellants/claimants have been dismissed by the learned Presiding Officer, MACT (Pilot Court), Karkardooma Courts, Delhi, vide impugned judgment-cum-award dated 02.05.2018, primarily on the ground that the claimants have not been able to establish the involvement of the offending vehicle - TATA 407 bearing No. UP 13 T 8347 in the motor accident that



occurred on 20.06.2014 at about 01:00 AM in the night.

4. Apparently, it was a case of hit and run and there are three injured persons who survived the injuries sustained in the accident while two others died due to injuries sustained in the accident, who were travelling in another vehicle bearing No. UP 16 AR 1897. Admittedly, FIR No. 222/2014 was registered at PS Bishrakh, Dadri, District Gautam Budh Nagar, Uttar Pradesh for the offences under Section 279/338/304A/427 of the IPC, which was lodged at the behest of Imran Khan, brother of the injured Mustkim Khan, wherein initially stated to the Police that it was a TATA Tempo bearing No. DL 1LR 9007 that was involved in the accident.

5. It is pointed out by the learned counsel for the appellants that the chargesheet was filed just after a month of the accident on 08.07.2014, although, the witness had approached the police soon after the accident on 28.06.2014 and had revealed that there was some mistake in notifying the identity of the vehicle, which was bearing No. UP 13 T 8347. It is pointed out that the Investigating Officer (IO)/SI Ashok Kumar was examined as R3W2 on behalf of the Insurance Company and although he had been summoned to bring the case diary of the investigation conducted by him, he failed to do so, and he made a deposition based on his memory of the incident.

6. Learned counsel for the appellants has referred to Annexure A-1, which is a copy of the case diary of the IO that has been obtained from the concerned Criminal Court, which evidently shows that on 28.06.2014, injured Mustkim Khan had approached the IO and had stated that it was the TATA 407 bearing No. UP 13 T 8347 that was involved in the accident. It appears that even the PCR had come to the spot of the accident and the two offending vehicles were very much



there but somehow the other offending vehicle sped away. Anyhow, it appears that pursuant to the information that was given on 28.06.2014, even mechanical inspection of the TATA 407 bearing No. UP 13 T 8347 was conducted.

7. On a prima-facie view of the aforesaid facts and circumstances, this Court is of the opinion, that the present application for leading additional evidence moved on behalf of the appellants/claimants be allowed and they be afforded another opportunity to present its case before the learned Tribunal. Needless to emphasized that the testimony of IO/SI Ashok Kumar assumes significance and the learned Tribunal would ensure that the IO is recalled and re-examined after summoning the entire case diary pertaining to the FIR No. 222/2014 was registered at PS Bishrakh, Dadri, District Gautam Bud Nagar, Uttar Pradesh under Section 279/338/304A/427 of the IPC. Further, the learned Tribunal shall also be empowered to summon the PCR records with regard to any information that was relayed on wireless or the entries in the general diaries as are maintained in the State of Uttar Pradesh that were lodged with regard thereto on the date of incident i.e. 20.06.2014 at around 01:00 AM.

8. In view of the forgoing discussion, the present appeals are allowed to the extent that the impugned judgment and award dated 02.05.2018 is set aside and the matter is remanded back for allowing the claimants/appellants to lead fresh evidence on the aforesaid aspects only, and the learned Tribunal shall endeavour to decide the matter at the earliest. Nothing contained in this order shall tantamount to expression of opinion in the merits of the case. This order is passed without prejudice.

9. The parties shall appear before the learned Trial Court for



further proceedings on 01.04.2024.

10. The present applications and appeals are disposed of accordingly.

11. The earlier date i.e. 05.03.2024 stands cancelled.

**DHARMESH SHARMA, J.**

**FEBRUARY 26, 2024/sp**