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

% ***Date of decision: 26th November, 2024***

+ **MAC.APP. 271/2018**

ASHOK KUMAR & ANR

.....Appellants

Through: Mr. Ashok Kumar Verma, Advocate.

versus

KARAN BHATIA

.....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. *An Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed by the Appellants against the Award dated 06.09.2017 *vide* which the learned Tribunal had *dismissed the Claim Petition/DAR* filed in regard to the demise of Smt. Surjit Kaur in a road accident on 22.10.2014.
2. ***Briefly stated***, the case of the Appellants/Claimants was that on 22.10.2014 at about 12:40 P.M, one *Scooty bearing No.DL-14SA-1515-Offending Vehicle*, which was being driven by the Respondent/Karan Bhatia, came from Yojna Vihar side at a high speed, hit Smt. Surjit Kaur who was crossing the road. She suffered fatal injuries.
3. *FIR No.810/2014 P.S. Seema Puri* was registered against the Respondent. After due investigations, the Chargesheet against the respondent was filed before the Court of learned M.M. The DAR was filed



before the learned Tribunal for compensation.

4. However, the learned Tribunal observed that *PW1/Ashok Kumar*, *PW2/Smt. Satto* and *PW3/Smt. Shobha* were admittedly not the eye witness. *R1W1-Shri Mehtab Singh*, who was one of the eye-witness cited in the Criminal case, was examined by the Respondent who categorically deposed that he did not witness the accident and that his statement was not recorded by the Police. The learned Tribunal thus, concluded that there was no evidence led about the involvement of Respondent in the accident and consequently, the Claim Petition was dismissed.

5. Aggrieved by the Impugned Order dated 06.09.2017, the present Appeal has been preferred.

6. ***It is argued on behalf of the Claimants*** that FIR has been duly filed in respect of this accident and the accident was caused by the Respondent by driving the Scooty in a rash and negligent manner. The learned Tribunal fell in error in concluding that the negligence has not been proved on record and thus, the Impugned Order is liable to be set aside and compensation be granted to the Claimants.

7. ***Learned Counsel on behalf of the Respondent*** has explained that the entire case of the prosecution rested on Shri Mehtab Singh who was cited as an eye witness. However, he in his evidence in the Criminal Case, had categorically stated that no accident had taken place in his presence. The Criminal Case eventually led into acquittal of the Respondent.

8. It is further argued by the Learned counsel for the Respondent submits that Shri Mehtab Singh was not even named by the Claimants as a witness. However, Shri Mehtab Singh had been examined by the Respondent in this case who deposed that he was not an eye witness to the



accident. Thus, the learned Tribunal has rightly dismissed the Petition.

9. Submissions heard and Record Perused.

10. On 22.10.2014, information was received about an accident at Vivek Vihar Red Light near Ginger Hotel *Vide* DD No.16A dated 22.10.2014 and the *Honda Activa* Scooty bearing No. DL-14SA-1515/Offending Vehicle was found standing near the scene of accident.

11. During the criminal investigations, the Statement of an eye witness-Shri Mehtab Singh was recorded, who stated that the accident was caused by the Scooty due to its rash and negligent driving by the Respondent. After due investigations, the Chargesheet was filed against the Respondent.

12. *Shri Mehtab Singh*, the eye witness, may have failed to support the case of the prosecution and turned hostile during the trial, but that does not take away the factum of accident and demise of Smt. Surjit Kaur. The investigations were duly carried out which revealed not only the involvement of the vehicle, but also that it was the offending vehicle which was being driven in a rash and negligent manner which resulted in the accident. The manner of accident is also evident from the Site Plan prepared during the criminal investigations.

13. 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, especially 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.

14. 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

15. 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 motor vehicle accident cases.

16. The position further stands clarified 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, that the acquittal of the Driver in a Criminal Case cannot be a ground for dismissal of the Claim before the Accident



Tribunal.

17. *The contention raised by the Respondent, that even Shri Mehtab Singh was not named by the Claimants as a witness, is not tenable as evidently Mehtab Singh had failed to support the case of the prosecution in the evidence before the learned M.M., it is but natural that the Claimant would have not included him in the List of Witnesses. Pertinently, this Mehtab Singh has been examined by the Respondent. It is also pertinent to note that despite the Respondent being the material witness, he has chosen not to step into the witness box in support of his assertions.*

18. Thus, it is hereby held that the accident was caused due to rash and negligent driving of the Offending Vehicle by the Respondent.

19. In view of the aforesaid, it is held that the learned Tribunal wrongly concluded that the negligence and the involvement of the vehicle has not been proved.

20. The Appeal is allowed and the Petition is hereby remanded back to the learned Tribunal to assess the compensation in accordance with law.

21. The parties are directed to appear before the learned Tribunal on 06.12.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 26, 2024
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