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

% ***Date of Decision: 11.07.2025***

+ **MAC.APP. 456/2023, CM APPL. 50984/2023**

REMYA NARAYANAN AND OTHERSAppellants

Through: Mr. Bhupesh Saini, Advocate

versus

RAJ MOHAMMAD AND OTHERSRespondents

Through: Mr. A.K Soni, Advocate

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 50984/2023*/Application for condonation of delay*

1. This is an Application filed on behalf of the Appellants seeking condonation of delay of four days in filing the Appeal.
2. For the reasons as stated in the Application, the delay is condoned.
3. The Application is, accordingly, disposed of.

MAC.APP. 456/2023

4. The present Appeal has been filed on behalf of the Appellants under Section 173 of the Motor Vehicle Act, 1988 impugning the judgment dated 11.05.2023 passed by Co-Presiding Officer, MACT-1 (West) Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award the Claim Petition filed by the Appellants has been dismissed by the learned Tribunal by giving a finding that the Appellants were



unable to prove that there was any rash and negligent driving on the part of the Respondent No 1/Driver. The learned Tribunal found that it was a case of hit and run and thus, the learned Tribunal had directed that the Appellants may approach the office of the DLSA, Faridabad District, Haryana or of DLSA, West District for grant of compensation under the Victims Compensation Scheme.

5. Learned Counsel appearing for the Appellants makes only one submission. He submits that the only reason that the learned Tribunal has rejected the Appellants' claim is that the statement of one of the Appellants was recorded belatedly and that the custody of the offending vehicle was taken after 20 to 25 days delay.

5.1 Learned Counsel for the Appellants further submits that this statement is not born from the record. He submits that initially, Jothish Thomas – the injured (witness) was not fit to make statement at the time of the accident and he was admitted to Asian Hospital at Faridabad. The other two occupants of the car namely Praveen Thankachan and Gugan had passed away in the accident.

5.2 The investigation was undertaken by the Investigating Officers [IO] and they took some time to trace the offending vehicle and thus, there was delay in its production. Thus, learned Counsel submits that this delay was not on account of the Appellants and they should not be deprived of compensation in this behalf.

6. Learned Counsel appearing on behalf of the Respondent No. 3/Insurance Company, on the other hand, submits that after the examination,



the learned Tribunal has found that the offending vehicle was not traceable and that the vehicle in issue has been planted by the IO in connivance with the injured Witness/Jothish Thomas and the legal representatives of the Appellants.

6.1 Learned Counsel for the Respondent No. 3/Insurance Company further submits that the offending vehicle was not identified. He seeks to rely upon the finding of the learned Tribunal that there is no mention of any number plate on the front bumper of the offending vehicle being found at the place of the accident or any seizure memo of the offending vehicle.

6.2 Lastly, it is contended by the learned Counsel for the Respondent No. 3/Insurance Company that the learned Tribunal has also given a finding that the number plate of the offending vehicle was found at the place of incident after about one month of the incident and that it is surprising “*what prevented the Investigating Agency to trace and seize the offending vehicle till 18.12.2017, if the injured had disclosed the registration number*”.

7. The brief relevant facts in the present case are set out below:

(i) The deceased and the injured/Jothish Thomas were travelling on the Faridabad - Gurgaon road on 21.11.2017 in a Maruti Wagon-R Car bearing registration number DL-9CL-2790 [hereinafter referred to as “Wagon-R car”]. At about 4 am when Wagon-R car reached the T-point on the Faridabad – Gurgaon road, a pick up van bearing Registration No. RJ-32GB-4659 came from the front and hit their Wagon-R car. As a result of the accident, the injured/Jothish Thomas became unconscious while the two other persons Praveen Thankachan and Gugan Ram travelling with the injured/Jothish



Thomas, died on the spot.

(ii) The PCR who were the first responders, when reached the spot, found the car in a damaged condition and found three persons lying inside the Wagon-R car in injured condition. An ambulance was called at the place of the incident and the ambulance personnel persons found that two persons were already dead and took the injured/Jothish Thomas as well as the bodies of the deceased to the Asian Hospital at Faridabad. An FIR no. 1021/2017 was registered in PS Suraj Kund, Faridabad qua the accident on 21.11.2017.

(iii) The investigation was conducted by more than one police officer and the investigation was firstly handled by SI Satya Pal [R3W2], the first IO who prepared the site plan and recorded the statement of injured Jothish Thoman on 26.11.2017. Thereafter, the investigation of the case was handed over to SI Satbir, R3W4 for further investigation who traced the offending vehicle from the number plate which was found at the place of incident after some investigation.

(iv) The statements of both the driver of the offending vehicle as well as the Investigating Officers were recorded by the learned Tribunal and on the basis of these statements, the finding has been reached.

8. This Court has examined the statement of the first IO which was recorded by the learned Tribunal as well as of Constable Anil Kumar/R3W1. Constable Anil Kumar [R3W1] has deposed that he was the first responder at the accident site and he found the Wagon-R car with three injured persons, two were sitting on the front seat and one on the rear seat. The driver of the Wagon-R car was found in his senses and the other two persons were found dead. It is apposite to extract the relevant portion of the statement of Constable



Anil Kumar/R3W1, which is set out below:

“...At the place of accident, there was one vehicle i.e., the Wagon R in which the injured persons were travelling, out of them, two persons were sitting on the front seats and one was on the rear seat. On examination by Ambulance persons, it was found that driver of the car was in senses and other two persons were expired...”

[Emphasis supplied]

9. The statement of the SI Satya Pal sets out that the site plan was prepared by him. He also affirmed the fact that from the place of the accident, he went to the Asian Hospital, Faridabad. The MLC of the third person Jothish Thomas was obtained from the Asian Hospital, Faridabad. It is set out in his statement that since the injured Jothish was not fit for the statement, his statement under Section 161 Cr.PC was recorded by this witness on 26.11.2017. The relevant extract is set out below:

“...When I reached at the place of the accident, all the three who were travelling in the car were already removed to the hospital. The damaged WagonR DL-9CL-2790 was in the side of the road, which was already removed to the side by the PCR persons. The site plan was prepared by me. From the place of accident, I went to Asian Hospital, Faridabad. As two persons namely Praveen and Gugan Ram were expired, the post mortem was performed on their bodies. The MLC of the third person namely Sh. Jotish was obtained from the Asian Hospital, Faridabad. The injured Sh. Jotish Thomas was not fit for statement till 25.11.2017. On 26.11.2017, the statement of injured Jotish Thomas was recorded u/s 161 Cr.P.C. Besides the injured Jotish Thomas, the statement of no other witness was recorded by me. Thereafter, investigation of the case was handed over to ASI Satbir for further investigation.”

[Emphasis supplied]

10. However, the statement that this Court finds crucial is the statement of SI Satbir Singh, who has in his evidence including his cross examination set out that the investigation was handed over to him by the first IO. He states that the Respondent No.1/Driver was arrested on 19.12.2017 and after the



search of the Respondent No.1/Driver, the offending vehicle was also seized on the same date and the seizure memo was prepared. It further sets out that the offending vehicle was mechanically inspected on that date itself. The evidence further records that the vehicle of the victim/deceased was not seized by him. It is further set out that when the investigation was handed over to him, the particulars i.e., the name and the address of the accused driver were not available but the same was found through investigation. It has been contended that the registration number of the offending vehicle was not available but after the investigation was handed over, the offending vehicle was traced by him. It further sets that the number plate of the offending vehicle was found at the place of the accident and from the number plate, the registered owner could be traced. The relevant extract of the statement of R3W4 is set out below:

"I am summoned witness in the present matter: I was one of the Investigating Officer (2nd IO) in respect of criminal case registered vide FIR No.1021/2017 PS Suraj Kund registered under Section 279/337/304A IPC against respondent no.1 Raj Mohammad.

When the investigation was handed over to me from the first IO, I had arrested the driver Raj Mohammad on 19.12.2017. Certified copy of the arrest memo is exhibited as Ex.R3W4/1. Personal search of the accused driver was made. Prepared the Faradinsaf of the accused. The offending vehicle bearing no. RJ-32-GB-4659 was seized on 19.12.2017 and the seizure memo was also prepared. The offending vehicle was got mechanically inspected through Motor Mechanic ASI Ravinder Kumar on 19.12.2017. Certified Copy of the mechanical inspection report is exhibited as Ex.R3W4/2. Copy of RC, fitness, insurance and DL of Driver Raj Mohammad along with the Haryana Tax Parchi were seized vide seizure memo dated 19.12.2017. Certified copy of the seizure memo of same is exhibited as Ex.R3W4/3.

The vehicle of the victim/deceased was not seized by me and the same would have been seized by the first IO. When the investigation was handed over to me, the particulars i.e. name and address of the accused driver were not available to me and the same was got find out by me through my investigation. The registration number of the offending



vehicle was also not available with me and the investigation was handed over and the registration number of the offending vehicle was not traced out by myself. The registration number of the offending vehicle was traced out by me as the number plate of the offending vehicle was found at the place of accident which got removed/fallen at the spot of the accident. From the registration number available on the number plate, the registered owner of the vehicle was traced out and from him, I approached the driver of the offending vehicle and arrested him. Thereafter, the investigation of the case was handed over to the Police Chowki In-charge as I was transferred.

XXX by Sh. Bhupesh Saini and Sh. Ravinder S. Sharma, Ld. Counsels for the petitioners.

The injured Jothish Thomas never informed me about the registration number of the offending vehicle in question. He might have informed the same to the other 10.

XXX by Sh. Radhey Shyam, Ld. Counsel for the respondents no.1 & 2.”

[Emphasis supplied]

11. It is also apposite now to refer to the statement of the Respondent No. 1/Driver EX R3W5 dated 18.07.2022. The Respondent No. 1/Driver in his statement has set out the following:

“I had picked up the aforesaid vehicle from the residence of the employer at about 10-11 AM on 20.11.2017. I had to visit to Gurugram and from there to Faridabad. The aforesaid vehicle was loaded with goods. I unloaded the goods from the said vehicle at Gurugram and left for Faridabad. I cannot tell which route I took to go to Faridabad from Gurugram. I was not having any receipt about the goods that I took to Gurugram. It is correct that while passing from one district to another district in a state, a toll receipt is issued. I am not having the toll receipt. There were two tolls between Kotputli and Gurugram.

xxx

xxx

xxx

I have not seen who got injured in the said accident. I did not get any injury. My vehicle was also got damaged. The bumper and bonnet of my vehicle got damaged. After the accident, I took the vehicle to my house. The distance between the place of accident and my house is about 70-80 Km but I am not sure. My vehicle did not stop anywhere while going to my house from the place of accident. I left the bumper at the place of incident. I informed the owner of the vehicle about the accident after reaching home. I was having mobile no. 6375219675 on the day of the



accident but I am not sure about the number. My present number is 8890389486.

The other vehicle involved in the accident is car but I did not know it's make at the time of accident."

[Emphasis supplied]

12. The learned Tribunal has analysed the evidence and placed emphasis on the fact that since the seizure memo did not set out that the number plate was found at the place of incident or any front bumper was found at the place of the incident or on the date of incident, it is astonishing as to how it could have been found one month after the incident.

13. This Court does not agree with the finding of the learned Tribunal. The examination of the statement of the witnesses of the Respondent No.3/Insurance Company, Sub Inspector Satbir Singh [R3W4], more importantly the statement of the Respondent No.1/Driver [R3W5] shows that there is no dispute that there was an accident.

13.1 Concededly, the Wagon-R car was being driven with three persons inside and the accident was severe enough to result in the death of two persons while one person was injured. The IO/SI Mr. Satbir Singh [R3W4] said that he initially had received the details of the injured through his colleague who was the earlier IO. He further states that once he conducted his own investigation, he found the number plate of the offending vehicle as well.

14. The evidence of the Respondent No.1/Driver, has not been considered by the learned Tribunal. The Respondent No.1/Driver admits to driving the vehicle between Gurugram and Faridabad on the given day and on the route and confirms the fact that the residence of the employer is near village



Kotputli in Rajasthan. He also submits that he left the residence of the employer at 10-11 am on 20.11.2017 and he had to visit Gurugram and from there go to Faridabad. He further admits to having loaded the goods at Gurugram. However, he in his evidence could not tell the route he took to Faridabad and could not place on record any receipts for tolls.

14.1 The Respondent No.1/Driver crucially, however, admits to being involved in an accident. He further admits that other than this accident, no other accident took place. He says he did not get injured, but his vehicle got damaged and states that the bumper and bonnet of his vehicle also got damaged. However, after the accident, instead of calling the police, he took the vehicle to his own house which is about 70-80 kilometres away, he did not stop anywhere and left the bumper at the place of the incident and informed the owner of the vehicle of the accident. He also admitted that the other vehicle involved in the accident is a car. Clearly, if the bumper of the vehicle fell off, the number plate would have fallen off as well with it. The driver has also described in his evidence that after the accident happened, he went to his residence and has got the vehicle repaired without informing the police. Thus the driver essentially fled the scene.

15. On 18.07.2022, the Respondent No.1/Driver further deposed that on 22.11.2017, he dropped the vehicle at the house of the Respondent No.2/owner of the offending vehicle and it was only 20-25 days later that the police came for investigation. Thus, clearly since the driver had absconded along with the vehicle after the accident, it would have taken some time for the police authorities to trace him. The police officials who are the witnesses of Respondent No.3/Insurance Company submit that after investigation, they



have managed to locate the driver and also have found the vehicle which was accidental. However, the learned Tribunal has not taken the statement of the Respondent No. 1/Driver into consideration.

16. The Supreme Court in *Anita Sharma v. New India Assurance Co. Ltd.*¹ has held that the Claimants have to merely establish their case on the touch stone of preponderance of probability. The Court while relying on the decisions of *Kartar Singh v. State of Punjab*² and *Sunita v. Rajasthan SRTC*³ reiterated that cross examination is an acid test of the truthfulness of the statement made by a witness. In addition, it was held that the strict principles of evidence and the standards of proof beyond reasonable doubt as in a criminal trial are inapplicable in MACT claim cases. It is apposite to set out the relevant extract of *Anita Sharma* case herein below:

“....

21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.”

[Emphasis Supplied]

17. The Coordinate Bench of this Court in *United India Insurance v. Deepak Goel*⁴ has observed that where the driver had fled away after causing

¹ (2021) 1 SCC 171.

² (1994) 3 SCC 569.

³ (2020) 13 SCC 486.

⁴ (2014) SCC OnLine 362



the accident from the spot, then an FIR shall be sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident. It is apposite to set out the relevant extract of *Deepak Goel* case herein below:

“21. Nonetheless, in a case, 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. Thus, the claimants have prove negligence of the driver of the offending vehicle.”

[Emphasis Supplied]

18. Concededly, in the present case sufficient evidence has been placed before the learned Tribunal in the form of FIR [Ex.PW1/8]; Mechanical Inspection Report – Detailed Accident Report [Ex.R3W4/2] and Seizure Memo of the offending vehicle [Ex.R3W4/3] and the statements of the Sub Inspector [R3W4] and the Respondent No.1/Driver. Further, the testimonial evidence of witnesses R3W1, R3W2, R3W4 and R3W5, which has stood the test of cross examination, has to be seen in light of preponderance of probability and not beyond a reasonable doubt. Thus, a case has been made out in the favour of the Appellants/Claimants. The learned Tribunal has thus erred in appreciating the evidence and failed to apply the settled principles to dismiss the claim of the Appellants.

19. In view of the foregoing discussions, this Court finds merit in the Appeal. The Appeal is, accordingly, allowed. The Impugned Award is set aside.

19.1 The matter is remanded for consideration before the learned Tribunal to determine the liability of the parties in the present Appeal as per the settled



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law.

20. The parties shall appear before the learned Tribunal on 05.08.2025 for further proceedings.

TARA VITASTA GANJU, J

JULY 11, 2025
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