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

Date of decision: 31.08.2023

+ **MAC.APP. 410/2023**

ADESH KUMAR

..... Appellant

Through: Mr.N.D.Singh, Adv.

versus

DEEPAK KUMAR PAL (DECEASED - THROUGH LRS)

..... Respondent

Through: Mr.Sandeep Bajaj, Mr.Soajib
Qureshi, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 44788/2023 & CM APPL. 44789/2023 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 44790/2023

2. This is an application seeking condonation of 20 days delay in re-filing the appeal.

3. For the reasons stated in the application, the same is allowed.

4. The application is disposed of.

MAC.APP. 410/2023 & CM APPL. 44787/2023

5. This appeal has been filed challenging the Award dated 01.03.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned

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MAC. APP. 410/2023

Page 1 of 8



District Judge, (Commercial Courts)-02, Central District, Tis Hazari Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT No.231/2022 titled ***Deepak Kumar Pal (Deceased – through LRs) v. Adesh Kumar.***

6. The above Claim Petition was registered on the basis of the Detailed Accident Report (in short, 'DAR') filed on 16.03.2022, stating that on 19.12.2021, at about 12:20 AM, the deceased Deepak Kumar Pal was returning home on his motorcycle bearing registration no. DL-5SAT-3628. When he reached Shanti Van Redlight, Daryaganj, Delhi, one Tractor bearing registration no. UP-16CP-6549 (hereinafter referred to as the 'Offending Vehicle'), being driven by its driver, who is the appellant herein, hit the motorcycle of the deceased, resulting in the deceased falling from the motorcycle on the road and sustaining fatal injuries.

7. The learned Tribunal, in the Impugned Award, has held that the identity of the appellant herein as the driver of the Offending Vehicle stands established. In fact, it was not denied by the appellant as well. The learned Tribunal further held that the death of the deceased Shri Deepak Kumar being a result of the injuries suffered by him in the accident was also established and, in fact, again not disputed by the appellant herein. The learned Tribunal further held that it had been established that the appellant herein was driving the Offending Vehicle, which was overloaded, and that the appellant herein was under the influence of alcohol. The learned Tribunal had held that the Offending Vehicle was being driven in a rash and negligent manner, resulting in the accident.

8. The learned Tribunal, relying upon the salary slip of the deceased



for the month of November, 2021, considered the salary of the deceased as Rs. 30,481/- per month, and assessed the loss of dependency for the Claimants/Respondents herein as Rs. 53,49,420/-. The learned Tribunal also awarded the non-pecuniary damages to the Claimants.

9. The first challenge of the appellant to the Impugned Award is that the claimants had failed to prove that the accident occurred due to the Tractor being driven in a rash and negligent manner. It is the case of the appellant that on the fateful day of the accident, he was going on the Offending Vehicle to the Narela Mandi to sell paddy cereal. While crossing Shanti Van Redlight (Ring Road), he met with an accident with a two wheeler, being driven by deceased Deepak Kumar, in a rash and negligent manner.

10. The learned counsel for the appellant submits that the accident occurred due to the negligence of the deceased. He submits that the Offending Vehicle can attain a maximum speed of only 25 km/h. Hence, no negligence on part of the appellant can be attributed. He submits that the spot of the accident was covered by several CCTV cameras, however, the police, intentionally, did not obtain their recordings to verify the manner and the cause of the accident. The learned counsel for the appellant submits that the testimony of the sole eye-witness, Mohd. Asim, recorded under Section 161 of the Criminal Procedure Code, 1973, cannot be relied upon, as the said witness had fled from the spot when the police came. His testimony is also not corroborated with the site plan prepared by the Investigating Officer (in short, for 'IO'), or the Mechanical Report or the Call Data Record obtained by the IO. He

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MAC. APP. 410/2023



submits that while the alleged eye-witness states that the Offending Vehicle had hit the motorcycle of the deceased from the side, the Mechanical Report would suggest that the motorcycle was hit from behind.

11. I have considered the above challenge of the appellant, however, find no merit in the same.

12. In ***Mangla Ram v. Oriental Insurance Co. Ltd.***, (2018) 5 SCC 656, the Supreme Court emphasised the test to be applied while judging a Claim Petition, as under :-

“27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined

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MAC. APP. 410/2023



that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.”

(Emphasis supplied)

13. In **Anita Sharma v. New India Assurance Co. Ltd.**, (2021) 1 SCC 171, the above principle was reiterated, observing as under :-

“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.”

14. In the present case, the learned Tribunal has placed reliance on the MLC of the appellant to hold that the appellant was under the influence of alcohol at the time of the accident. It has further found that the Offending Vehicle was overloaded with paddy bags. The learned Tribunal has also held that based on the statement of an eye-witness, Mohd. Asim, whose presence at the spot of the accident had been corroborated by the police from the Call Data Record, it was established that the accident had taken place due to the appellant herein driving the Offending Vehicle in a rash and negligent manner. The learned Tribunal

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MAC. APP. 410/2023



also relied upon the photographs of the spot of the accident taken by the police, as also the Mechanical Report. Applying the test of preponderance of probabilities, the learned Tribunal has rightly reached the conclusion that the accident had taken place due to the appellant driving the Offending Vehicle in a rash and negligent manner. I have no reason to disagree with the said finding.

15. The appellant also challenges the Impugned Award on the ground that the income of the deceased was wrongly taken to be proved. He submits that the Claimants/respondents herein did not examine the alleged employer of the deceased. He submits that therefore, the income of the deceased remained unproved.

16. I am unable to accept the above plea of the appellant.

17. The Claimants had produced before the learned Tribunal, not only the Employment Certificate from the employer of the deceased, The Delhi Golf Club (Ex.PW1/E-1), but also his Salary Slip for the month of November 2021 (Ex. PW1/E-2), to prove that the deceased, at the time of the accident, was working as a Data Entry Operator with the Delhi Golf Club. Based on the Salary Slip produced by the Claimants, the income of the deceased was determined by the learned Tribunal as Rs. 30,481/- per month. No fault can be found on the above determination. Though, ideally the Claimants should have produced the employer as a witness to prove the income drawn by the deceased, however, non-production of the employer is not fatal to the claim or even sufficient to disprove the income drawn by the deceased. The income of the deceased was proved by the statement of the wife of the deceased, Ms. Priya Pal (PW-1) and

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MAC. APP. 410/2023



the documents above-mentioned.

18. The learned Counsel for the appellant further contends that the appellant is a poor farmer and had purchased the Offending Vehicle by taking a loan. The appellant has a family consisting of himself, his aged mother and two minor children. He submits that in determining the compensation, these factors should be taken into account.

19. I am unable to accept the above submission of the learned counsel for the appellant. In determining the compensation payable, it is the Claimant who has to be compensated for the loss suffered due to the accident involving a motor vehicle. The status or pecuniary standing of the victim and not of the offender is to be taken into account.

20. The learned counsel for the appellant further submits that this Court should exercise its power under Section 357A of the Criminal Procedure Code, 1973 and give direction to the Government of NCT of Delhi to pay the compensation to the Claimants. He places reliance on the judgments of the Supreme Court in *State of Himachal Pradesh v. Ram Pal*, (2015) 11 SCC 584; *Suresh v. State of Haryana*, (2015) 2 SCC 227; and, *State of M.P. v. Mehtaab*, (2015) 5 SCC 197.

21. I am unable to agree to the above submission. Power under Section 357A of the Criminal Procedure Code, 1973 can be exercised by the Trial Court considering the criminal trial against the appellant herein. The same cannot, however, be a ground to find fault with the Impugned Award.

22. Accordingly, I find no merit in the present appeal. The appeal and the pending application are dismissed.



23. The statutory amount deposited by the appellant with this Court, along with interest accrued thereon, shall be released to the Claimants/respondents herein and shall be adjusted by the learned Tribunal against the awarded amount.

NAVIN CHAWLA, J

AUGUST 31, 2023
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MAC. APP. 410/2023