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2024:DHC:46

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

Reserved on: 29.11.2023
Pronounced on: 05.01.2024

\+ **MAC.APP. 920/2018 & CM APPLs. 42657/2018, 17673/2022**

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr.Brijesh Bagga, Adv.

versus

SAJJANPATI @ SAJNA & ORS ..... Respondents
Through: Mr.Anshuman Bal, Adv. for R-1-2.
Mr.M.S.Aggarwal, Adv. for R-3.
Mr.Devendra Kumar, Adv. for R-4.

\+ **MAC.APP. 922/2018 & CM APPLs. 42721/2018, 42723/2018**

IFFCO TOKIO GENERAL INSURANCE CO LTD .... Appellant
Through: Mr.Brijesh Bagga, Adv.

versus

SANJU RANI & ORS ..... Respondents
Through: Mr.Vijay Kumar, Adv. for the LRs of Naveen Kumar
Mr.Devendra Kumar, Adv. for R-4.
Mr.M.S.Aggarwal, Adv. for R-5.

\+ **MAC.APP. 254/2019 & CM APPL. 7179/2019**

ANIL KUMAR ..... Appellant
Through: Mr.Devendra Kumar, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE COMPANY LIMITED & ORS ..... Respondents
Through: Mr.Brijesh Bagga, Adv. for R-1.

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Mr.M.S.Aggarwal, Adv. for R-2.

\+ **MAC.APP. 20/2021**

SUMIT ..... Appellant

Through: Mr.M.S.Aggarwal, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD & ORS ..... Respondents

Through: Mr.Brijesh Bagga, Adv. for R-1.
Mr.Devendra Kumar, Adv. for R-4.
Mr.Dhananjay Rana, Mr.Vikrant N.Goyal, Advs. for LR.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These appeals have been filed challenging the Award(s) dated 04.06.2018 (hereinafter referred to as the 'Impugned Awards') passed by the learned Motor Accident Claims Tribunal, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT case No.450274/2016, titled ***Sajjanpati @ Sajna & Anr. v. Sumit & Ors.*** (MAC.APP. 920/2018) and MACT case No.450220/2016, titled ***Sanju Rani & Ors. v. Sumit & Ors.*** (MAC.APP.922/2018).

2. As the above Claim Petitions claimed compensation for the death of two persons who died in the same accident, and as common questions arise for consideration in these appeals, they are being considered and disposed of by way of this common judgment.

3. While MAC.APP.920/2018 and MAC.APP.922/2018 have been filed by the IFFCO Tokio General Insurance Company Limited (hereinafter

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referred to as the 'Insurance Company'), MAC.APP 254/2019 has been filed by the owner of the car bearing registration no.HR-79-3123 (hereinafter referred to as the 'Offending Vehicle'), and MAC.APP.20/2021 has been filed by Sh.Sumit, who was alleged by the claimants in the two Claim Petitions before the learned Tribunal to be the driver of the offending vehicle at the time of the accident.

Factual Brief

4. It was the case of the claimants in both the Claim Petitions before the learned Tribunal that on 12.05.2014, at about 5:00 PM, Surinder Singh, Naveen Kumar, Sumit and Sudhir were going in the offending vehicle to Haridwar. The Offending Vehicle was being driven by Sumit at a very high speed and in a rash and negligent manner. When the Offending Vehicle reached near Radha Swami Satsang, coming from Kanjhawala to Karala Mor, Kanjhawala, Delhi, Sumit lost control of the Offending Vehicle and hit the Offending Vehicle against the divider. As a result of the accident, Surinder and Naveen Kumar suffered fatal injuries and died at the spot. Sh.Sumit and Sh.Sudhir also suffered injuries.

5. The Claim Petition, being MACT case No.450274/2016, was filed by the legal heirs of Late Sh. Surinder, while MACT case No.450220/2016 was filed by the legal heirs of Late Sh. Naveen Kumar, claiming compensation from the Insurance Company, with whom the Offending Vehicle is insured, the Appellant in MAC.APP 254/2019, who is the owner of the Offending Vehicle, and the Appellant in MAC.APP.20/2021, the alleged driver of the Offending Vehicle.

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6. The learned Tribunal, in its Impugned Award(s), has held that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner by its driver, that is, Sh.Sumit. The learned Tribunal has awarded compensation of Rs.15,51,407.2/- in favour of the respondent nos.1 and 2 in MAC. APP. 920/2018, that is, the Legal Heirs of the deceased Surinder Singh; and Rs.21,61,398.4/- in favour of the respondent nos.1 to 4 in MAC.APP.922/2018, that is, the Legal Heirs of the deceased Naveen Kumar, to be paid along with an interest at the rate of 9% per annum with effect from the date of filing of the Claim Petitions till its realization.

7. On the question of liability to pay the compensation, the learned Tribunal has held that as Sumit was not holding a valid and effective driving licence as on the date of the accident, therefore, the Insurance Company will be liable to pay the compensation amount to the claimants in the two Claim Petitions, however, shall have a right to recover the compensation paid to the claimants from the owner and the driver of the Offending Vehicle, that is, Sh.Anil Kumar (Appellant in MAC.APP.254/2019), and Sh.Sumit (Appellant in MAC.APP.20/2021), respectively.

Submissions of the Learned Counsel for the Insurance Company:

8. The learned counsel for the Insurance Company submits that the two Claim Petitions, that is, MACT Case No.450274/2016 (seeking compensation for the death of Sh.Surinder Singh) and MACT Case No.450220/2016 (seeking compensation for the death of Sh.Naveen Kumar) arose out of the same accident and a common question arose as to whether the accident took place due to the offending vehicle being driven in a rash and negligent manner by Sh.Sumit. He submits that, in fact, both the Claim

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Petitions should have been consolidated by the learned Tribunal. He submits that, even otherwise, they were being taken up together on every date of hearing before the learned Tribunal and, therefore, the learned Tribunal was aware of the nature of the evidence being led in both the Claim Petitions.

9. He submits that as far as the MACT Case No.450274/2016 is concerned, claimants therein examined Sh.Sudhir as PW-2, who also was allegedly travelling in the offending vehicle at the time of the accident and was the only eye-witness of the accident in question. In his statement, PW-2 had stated that at the time of the accident, the offending vehicle was being driven by Sh.Naveen, for whose death, compensation was being claimed in MACT case No.450220/2016. He submits that though Sh.Sudhir was cross-examined by the learned counsel appearing for the Insurance Company before the learned Tribunal, the claimants in the said Claim Petition did not even cross-examine him. He submits that the learned Tribunal, in the Impugned Award(s), has not discussed the evidence of PW-2 Sh.Sudhir, in fact, it does not even take note of the said statement.

10. He submits that if the statement of Sh.Sudhir is to be accepted by the learned Tribunal and by this Court, in that event, both the Claim Petitions are liable to be dismissed. He submits that as far as the MACT Case No.450274/2016, that is the one claiming compensation for the death of Sh.Surinder is concerned, the same was liable to be dismissed inasmuch as for sustaining their claim, the onus was on the claimants to prove that the offending vehicle was being driven by Sh.Sumit in a rash and negligent manner. He submits that if the driver is proved to be not Sh.Sumit but Sh.Naveen, the Claim Petitions also fails. As far as the Claim Petition bearing MACT Case No.450220/2016 is concerned, as the said Claim

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Petition was seeking compensation for the death of Sh.Naveen, if Naveen himself was the driver who was responsible for the accident, the Claim Petition was not sustainable. He submits that in either case, the Claim Petitions were liable to be dismissed by the learned Tribunal.

11. He further submits that from the FIR registered for the accident and the Mechanical Inspection Report of the Offending Vehicle, it is also evident that the Offending Vehicle, at the time of the accident, was being driven with a fake number plate, that is, DL-8CNB-6475, while its actual registration number was HR-79-3123. He submits that the real number plate was also discovered under the driver's seat of the Offending Vehicle. He submits that even the owner of the Offending Vehicle had filed an FIR reporting the theft of the Offending Vehicle at PS Kharkhoda, on the same day of the accident at about 4.30 PM. He submits that the Offending Vehicle was stolen and, therefore, all the occupants of the Offending Vehicle were illegal occupants of the Offending Vehicle, and their legal heirs were not entitled to claim compensation.

12. Placing reliance on the judgment of the High Court of Madras in ***Mariammal & Ors. v. M.Ramasubramaniam & Ors.*** 1997 SCC OnLine Mad 520, he submits that if the vehicle has been stolen, then neither the Owner nor the Insurance Company shall be made liable to pay the compensation. In support, he also places reliance on the judgment of the Supreme Court in ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.*** (2007) 5 SCC 428 to submit that the actual tortfeasor is the driver; the owner of the Offending Vehicle becomes vicariously liable because for the act of the driver; and the Insurance Company becomes liable as an indemnifier of

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this liability. If the owner is not liable, then the Insurance Company can also not be made liable for paying the compensation.

13. He submits that PW2, Sh.Sudhir, in his statement before the learned Tribunal has also admitted that there were other criminal cases pending, not only against him, but also against Sh.Sumit. He submits that, therefore, the learned Tribunal should have inquired into the purpose for which the vehicle was being used at the time of the accident, for if the occupants were travelling in the offending vehicle to commit a crime, no compensation is payable for their death in the accident.

Submissions of the Learned Counsel for the Owner of the Offending Vehicle:

14. The learned counsel for Sh.Anil Kumar, the owner of the Offending Vehicle, supports the submissions made by the learned counsel for the Insurance Company. He submits that the learned Tribunal has erred in drawing an adverse inference against the owner of the Offending Vehicle merely because he did not enter the witness box and did not produce the police officials from PS Kharkhoda to prove the FIR filed regarding the theft of the Offending Vehicle. He submits that the said FIR was preceded by a phone call to the police, on which the owner of the vehicle was told to wait for some time before registering the FIR, as sometimes the stolen vehicle is found immediately. He submits that on 12.05.2014, that is, the date of the accident, even before the accident had taken place, the FIR was registered at the instance of the owner of the Offending Vehicle, reporting that the same had been stolen from the parking in front of his residence. He submits that merely because the owner of the Offending Vehicle did not appear before

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the learned Tribunal, the learned Tribunal could not have drawn an adverse inference against the owner. He submits that it was also the duty of the learned Tribunal to make a proper inquiry, especially where it was confronted with the fact that the Offending Vehicle was being driven with a fake number plate.

Submissions of the Learned Counsel for Sh. Sumit/Alleged Driver of the Offending Vehicle:

15. The learned counsel for Sh.Sumit submits that Sh.Sumit has been falsely accused in this case. He places his entire reliance on the statement of Sh.Sudhir, PW2, and submits that Sh.Sudhir, who is the only eye-witness of the accident in question, has admitted that the Offending Vehicle was being driven by Sh.Naveen, one of the deceased. He submits that in view of such evidence before it, the learned Tribunal, only on the assumption and on conjectures and surmises, has held that the claimants have been able to prove that the accident had occurred because of the Offending Vehicle being driven in a rash and negligent manner by Sh.Sumit, and granted a right to the Insurance Company to claim compensation paid by it to the claimants from Sh.Sumit.

Submissions of the Learned Counsels for the Claimants:

16. On the other hand, the learned counsels for the claimants in both the Claim Petitions, submit that the statement of PW-2, Sh.Sudhir, cannot be relied upon as he has testified falsely at the behest of Sh.Sumit, who, admittedly, is his friend, making him an interested witness.

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17. They submit that in a Claim Petition filed under the provisions of the Motor Vehicles Act, 1988 (in short, 'Act'), the claimants are to prove their claim only on the touchstone of preponderance of probability. In the present case, the police has proceeded against Sh.Sumit as the driver of the Offending Vehicle at the time of the accident. Sh.Sumit chose not to appear before the learned Tribunal nor led any evidence in support of his defence, that he was not driving the Offending Vehicle at the time of the accident. He also did not file any complaint with any senior police official that he was being falsely implicated in the criminal case. They submit that, therefore, the learned Tribunal has rightly concluded that the Offending Vehicle was being driven by Sumit in a rash and negligent manner.

18. On the question of the fake number plate on the Offending Vehicle, they submit that the said case is being falsely set up by the owner of the Offending Vehicle, that is, Sh.Anil Kumar. They submit that the FIR was got registered by Sh.Amit Kumar in suspicious circumstances and by anti-dating it to just before the accident. It is for this reason that neither he himself appeared before the learned Tribunal nor did he lead any other evidence or examine any other witness in support of his defence. They submit that in the absence of any evidence on his behalf, this Court cannot take cognizance of the submission that the Offending Vehicle was stolen and was being driven with a fake number plate.

ANALYSIS AND FINDINGS:

19. I have considered the submissions of the learned counsels for the parties.

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20. As noted hereinabove, both the Claim Petitions were filed claiming compensation for the deaths that have taken place in the same accident. Therefore, the nature and the manner in which the accident has taken place cannot be different in the two cases. Even though they were being proceeded separately, the learned Tribunal, under Section 168 of the Act, is to *'hold an inquiry into the claim'* and not a Civil Trial.

21. In the present case, the claimants in both the Claim Petitions had set up their claims on the assertion that the Offending Vehicle was being driven by Sh.Sumit at the time of the accident. As far as the legal heirs of Sh.Naveen are concerned, in MACT case No.450220/2016 filed by them, they did not examine the only eye-witness to the case, that is, Sh.Sudhir. The witnesses examined by them were admittedly not the eye-witnesses to the accident.

22. On the other hand, in the Claim Petition filed by the legal heirs of Sh.Surinder, that is, MACT Case No.450274/2016, they examined the eye-witness Sh.Sudhir as PW2. Sh.Sudhir did not support the claim of the claimants therein that the Offending Vehicle was being driven by Sh.Sumit at the time of the accident. He stated that the Offending Vehicle was being driven by Sh.Naveen. The claimants did not cross-examine him nor even give a suggestion to him that he was deposing falsely at the behest of Sh.Sumit. The learned Tribunal has not even discussed the evidence of PW2; this is a grave error on the part of the learned Tribunal.

23. Once the statement of Sh.Sudhir is to be accepted, the Claim Petitions would have to fail because they are premised on the basis that the Offending Vehicle was being driven in a rash and negligent manner by Sh.Sumit. In any case, Sh.Sumit could not have been made liable as the driver of the

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Offending Vehicle. If the statement of Sh.Sudhir is to be considered, then, in any case, the legal heirs of Sh.Naveen cannot be granted any compensation, as the tortfeasor himself cannot be compensated for his own negligence.

24. On the other hand, the learned Tribunal draws an inference of guilt from the fact that an FIR and a Chargesheet have been filed against Sh.Sumit. As far as the FIR is concerned, it does not name Sh.Sumit as the driver of the Offending Vehicle. As on the date of the Impugned Award(s), the chargesheet had not been filed. Therefore, even this finding of the learned Tribunal is incorrect and the presumption that the learned Tribunal draws, cannot be sustained even on the touchstone of preponderance of probability. Such presumption, in any case, cannot be drawn in the presence of evidence to the contrary, unless such evidence is held to be unreliable.

25. What is more glaring than the above is the fact that the FIR records that the Offending Vehicle was bearing a fake number plate with registration no. DL-8CNB-6475. It is only on inquiry that the genuine number plate of the Offending Vehicle bearing registration no. HR-79-3123 was discovered under the driver's seat of the Offending Vehicle. On discovery of such material evidence, it was the duty of the learned Tribunal to inquire as to under what circumstances the Offending Vehicle bore a fake number plate. This could have been explained only by the police, as they would have presumably inquired into the same.

26. Under Section 169 of the Act, the learned Tribunal can even seek assistance in holding the inquiry. It also has the power to enforce the attendance of witnesses, compelling the discovery, and production of documents and material objects. The learned Tribunal, however, made no efforts to find out the truth on how and why the Offending Vehicle was

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bearing a fake number plate at the time of the accident. It did not summon any police official nor inquire from the police of its investigation into this aspect.

27. In ***State of Mysore v. S.S. Makapur,*** 1993 (2) SCR 943, the Supreme Court has held as under:

> *"That tribunal exercising Quasi-Judicial function are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can unlike courts, obtain all information for the points under the inquiry from all sources and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity depends on the facts and circumstances of each case and where such an opportunity has been given, the proceedings are not open to attack on the ground that the inquiry was not conducted in accordance with the procedure followed in Courts."*

28. The learned Tribunal failed to exercise the jurisdiction vested in it by the Act, and did not conduct a proper inquiry, rather chose to proceed on the basis of conjectures and surmises, which cannot be sustained.

29. As noted hereinabove, the learned Tribunal proceeded on the basis that a charge-sheet already stands filed, though, this was incorrect. The charge-sheet had not been filed till the passing of the Impugned Award. This is a factual error that the learned Tribunal committed in its Impugned Award(s). Even otherwise, the Charge-sheet, in fact, also charges Mr.Sumit under Section 482 of the Indian Penal Code, 1860, that is for using a false property mark, as the Offending Vehicle bore a fake number plate. This

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gives credence to the defence of the owner of the Offending Vehicle that it was stolen by the occupants of the Offending Vehicle or at least some of them.

30. In ***Meena Variyal*** (Supra), it has been explained that the liability of the Insurance Company to pay the compensation is due to its contractual liability to indemnify the owner of the vehicle. Once it is held that the owner is not liable to pay the compensation, liability of the Insurance Company to pay the same, cannot arise.

31. In ***Mariammal*** (Supra), the High Court of Madras held that where the vehicle is stolen, neither the owner nor the insurer thereof are liable to pay the compensation.

32. In view of the above, I also find merit in the submission of the learned counsel for the Insurance Company that, if the Offending Vehicle was indeed stolen at the time of the accident, neither the owner nor the Insurance Company can be made liable to pay the compensation. This issue was, therefore, very vital to determine the person to be held liable to pay the compensation, if any, to the Claimants. The learned Tribunal, however, did not consider the above aspect in the Impugned Award(s) and, therefore, committed a grave error.

33. The learned Tribunal has also erred in drawing an adverse inference against the owner of the Offending Vehicle merely because he did not produce the police officials to prove the FIR that is registered at his behest at Police Station Kharkhoda. With the other material on record, it was evident before the learned Tribunal that the vehicle was being driven with a fake number plate. This itself corroborated the case of the owner of the Offending Vehicle that the Offending Vehicle had been stolen prior to the accident in

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question. The fact of the FIR being registered at the complaint of the owner of the Offending Vehicle was also before the learned Tribunal. Mere delay in registration of the FIR or its proximate timing to the date and time of the accident in question, in my opinion, was not sufficient to discard the case of the owner of the Offending Vehicle that the Offending Vehicle was indeed stolen from parking in front of his house on the night before the date of the accident. In any event, the learned Tribunal should have inquired into the same rather than proceeding on the basis of an adverse presumption.

34. In my view, therefore, the learned Tribunal has conducted the inquiry in a very casual manner and without appreciating the relevant facts that needed to be inquired into and answered. Its findings are based on assumptions, conjectures, and surmises, rather than any appreciation of evidence before it.

35. In ***Meena Variyal*** (Supra), it has been held that though the strict rules of evidence may not be applicable to the inquiry to be held by the learned Tribunal under the Act, at the same time, the learned Tribunal being trained in law should not ignore all the basic principles of Law establishing liability. The Supreme Court held as under:

> *"**10.** Before we proceed to consider the main aspect arising for decision in this appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity.*

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When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed?

11. *As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the*

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> *monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-à-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the Insurance Company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it."*
>
> *(Emphasis Supplied)*

CONCLUSION:

36. In view of the above, the Impugned Award(s) cannot be sustained. They are, accordingly, set aside.

37. The Claim Petitions are remanded back to the learned Tribunal to hold a further inquiry into the same.

38. As the accident had taken place on 12.05.2014, the learned Tribunal shall expedite the inquiry and conclude the same within a period of six months of their first listing. It shall also grant opportunity to the owner of the Offending Vehicle, that is, Sh.Anil Kumar, to lead further evidence in support of his defence.

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39. This Court, vide its interim order(s) dated 12.10.2018 in MAC. APP. 920/2018 and 922/2018, directed the Insurance Company to deposit the entire awarded amount(s) with the Registrar General of this Court, and the execution of the Impugned Award(s) was stayed on such deposit. In view of the present judgment, the said amount(s) and the statutory amount deposited by the appellants, shall be kept as security for any Award(s) that the learned Tribunal would pass on the remand. In such Award(s), the learned Tribunal shall also give directions with respect to the entitlement of the parties to the said amount(s) and the interest accrued thereon. The said amount(s) along with interest accrued thereon be transmitted to the learned Tribunal, which shall keep the amount so received in a Fixed Deposit Receipt with automatic renewal.

40. The appeals are disposed of in the above terms. The pending applications are also disposed of.

41. There shall be no orders as to costs.

42. Let the Trial Court Record(s) be sent back to the learned Tribunal.

NAVIN CHAWLA, J.

JANUARY 05, 2024/AS/SS

Click here to check corrigendum, if any