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

+ **MAC.APP. 894/2019 & CM APPL. 50473/2019**

ARCHNA

..... Appellant

Through: Mr. R. Venkataraman and Mr. Adesh
Kumar, Advocates.

versus

KOMAL & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **22.11.2019**

CM APPL. 50476/2019 (for delay of 109 days in filing)

This application seeks condonation of delay of 109 days in filing of the appeal.

For the reasons mentioned in the application, the delay is condoned.

The application stands disposed-off.

CM APPL. 50474/2019 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

MAC.APP. 894/2019 & CM APPL. 50473/2019

This appeal impugns the award of compensation dated 06.04.2019 passed by the learned MACT in DAR No. 33/19 on the ground that there is no material witness whatsoever to substantiate the claimants' contention that the appellant's vehicle was involved in the fatal accident; that the learned



Tribunal has gone by the contents of the FIR and Chargesheet. The learned counsel for the appellant submits that reference to the Chargesheet is rather anomalous because the judgment was pronounced on 06.04.2019 whereas the chargesheet was filed on 23.04.2019.

The learned counsel for the appellant further submits that when information was sought from the Investigating Officer apropos the CCTV recording of the incident, the appellant was informed that there was no such recording or CCTV footage. But the FIR was registered on the statement of the Investigating Officer who apparently relied upon the CCTV footage. Therefore, in the absence of any CCTV footage, the recording of the FIR or the statement of the Investigating Officer becomes baseless and unreliable. One eyewitness, PW-2, Hira Ballabh, was produced by the claimants, however, this eyewitness did not find any mention in the FIR which was registered a day after the alleged accident.

The FIR records that the Investigating Officer had gone to the site and did not find any eyewitness there. Interestingly, Hira Ballabh, PW-2, says that he had met the Investigating Officer, the evening of the alleged accident and at the same spot of the accident at about 11:15 p.m. and had handed over the footage of the CCTV recording. It is odd that if the CCTV recording had been handed over to the Investigating Officer by an eyewitness and his brother, then surely such eyewitness ought to have been mentioned in the FIR, which was recorded the next day. The vehicle was seized on 19.12.2018 i.e. after a month later.

It is the appellant's case that his vehicle was falsely implicated in the motor accident, because anybody could have noted down its registration number and ownership details which was inscribed on its sides. The said



vehicle was used for carrying milk every morning from villages to the end users in other parts of the city.

Therefore, the learned counsel for the appellant further argues that for the learned Tribunal to hold the appellant liable for the accident is without basis.

Issue notice to the respondents by way of ordinary process, approved courier, Speed Post, WhatsApp, E-mail, *dasti* and through counsel as well, returnable on 14.05.2020.

Till the next date of hearing, there shall be a stay on the execution of the Award.

A copy of this order be given *dasti* to the learned counsel for the appellant under the signature of the Court Master.

NAJMI WAZIRI, J

NOVEMBER 22, 2019

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