

9Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			AO No.280 of 2022 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Anant Dhaka, Advocate, for the appellant. Mr. Rakshit Srivastava, Advocate, for the respondents. Heard learned counsels for the parties. It's claimants appeal from order preferred as against the impugned award dated 10.06.2022, as it was rendered in MACP Case No.26 of 2020, "Smt. Meenakshi Devi and others Vs. ICICI Lombard General Insurance Company Ltd.". The brief facts of the case are, that an accident did chanced on 11.06.2020, when the deceased and one Toshit Kimothi, and his friend were riding on the motorcycle bearing Registration No.UK07 6458, and when they were coming from Pandukeshwar (Joshimath) towards their house at Nandprayag, the motorcycle on which they were travelling is said to have skidded, due to which the pillion rider has met with the sad demise. Hence, the claim petition was filed. The claim petition was filed on the ground that the rider of the offending vehicle i.e. Toshit Kimothi, was riding the motorcycle in a rash and negligent manner, and as such, since there was a negligence on part of the rider of the vehicle, the claimants would be entitled for the grant of a compensation for the death caused to the bread-winner of the family. The claim petition was preferred under section 166 of the Motor Vehicle Act, where an aspect of negligence was mandatorily required to be established by evidence on record prior to determination of the compensation to be made payable by the Insurance Company. Shri Toshit Kimothi, did appeared in the witness box as DW 1 on 20.05.2022, he had recorded his statement, and was cross-examined too by the Insurance Company, as well as, by the claimants. In the cross-examination, thus, made the

			claimants were unable to place any question or to extract any act of rash riding of the motorcycle by Shri Toshit Kimothi, and no material as such was extracted by the claimants in evidence, which could have at all resulted into a determination of the compensation, under section 166 of the Motor Vehicle Act, where negligence plays an important role to be considered for determination of the compensation and fixation of its liability. In view of the fact that, and as per the observations also, the learned Motor Accident Claims Tribunal, when it was dealing with the aspect of negligence, it had been observed, that an aspect of the negligence was not being able to be established by the claimants, even during the course of the examination of the witnesses before the learned Motor Accident Claims Tribunal, and thus, in the absence of the aspect of the negligence being established, no compensation could have been awarded under section 166 of the Motor Vehicle Act. Hence, based on it, the rejection of the claim petition by the impugned award dated 10.06.2022, cannot be faulted of in any manner whatsoever. Hence, the appeal from order lacks merit and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) 18.12.2023 NR
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