

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

Date of Decision: August 31, 2018

+ **MAC.APP. 198/2017 & CM 8527/2017**
+ **MAC.APP. 199/2017 & CM 8699/2017**
+ **MAC.APP. 202/2017 & CM 8646/2017**
+ **MAC.APP. 203/2017 & CM 8696/2017**
+ **MAC.APP. 204/2017 & CM 8700/2017**

SEEMA SHARMA
SEEMA SHARMA & ANR
SEEMA SHARMA & ANR.
SATINDER KUMAR
SANTOSH KUMAR

.....Appellants

Through: Mr. Anshuman Bal, Advocate

Versus

RELIANCE GEN INS CO LTD & ORS.Respondents
Through: Mr. Rajeev M. Roy and Mr. P.
Srinivasan, Advocates for respondent No. 1
Mr. Yeeshu Jain, Advocate for respondents No.
4 and 5

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned five appeals arise out of common impugned Award of 29th September, 2016. With the consent of learned counsel for the parties, these five appeals have been heard together and are being decided by this common judgment.

2. In this unfortunate accident, *Priyanka*, aged 16 years and *Happy*, aged 10 years have died and their parents-*Satinder* and *Seema* as well as

their relative-*Santosh* were injured, while they were travelling in insured vehicle in question.

3. The factual background of this case, as noticed in the impugned Award, is as under:-

“Briefly the facts of the case are that on 19/10/2009 at about 5:30 AM injured and deceased persons were going from their house to Agra in Maruti Van bearing no.DL 8CNB 3849 and when they reached at NH-2 Road, in front of Akhand Jyoti Dharam Kanta near village Barari in the meanwhile a tempo bearing no. UP 85Q 9290 which was going ahead applied sudden breaks in a rash and negligent manner as a result of which the van hit against the tempo and Sh. Santosh Kumar, Sh. Satinder Kumar and his wife Smt. Seema Sharma sustained injuries, while Happy and Priyanka died on the spot. The FIR No. 235/2009 u/sec 279/338/304-A/427 IPC was also registered at PS Refinary, Mathura in this respect.”

4. Upon considering the evidence of the injured persons and other evidence on record, *the Motor Accident Claims Tribunal (hereinafter referred to as “the Tribunal”)*, the Tribunal vide impugned Award has held that the fault was of injured-*Satinder* in causing the accident in question and no case of composite or contributory negligence is made out. Hence, the claim petitions filed by appellants stand dismissed vide impugned Award.

5. The challenge to impugned Award by learned counsel for the claimants/injured is on the ground that the Tribunal has erred in holding the injured-*Satinder* to be negligent in causing the accident in question. It is submitted that claim petitions filed in case of deceased-*Priyanka* and

Happy are under Section 163-A of *the Motor Vehicles Act, 1988*, and that in any case, the Tribunal could not have dismissed their claim petitions on the negligence aspect. It is submitted that even the petition filed under Section 166 of *the Motor Vehicles Act, 1988*, by the injured can be converted into one under Section 163-A of *the Motor Vehicles Act, 1988* and the compensation ought to be accordingly reassessed as per Second Schedule to Section 163-A of *the Motor Vehicles Act, 1988*.

6. On the contrary, learned counsel for respondent-Insurer submits that in a claim petition filed in Mathura Court, it has been already held that the injured-*Satinder* was negligent and so, these appeals deserve to be dismissed.

7. In rebuttable, learned counsel for appellants submits that in the criminal case, injured-*Satinder* has been acquitted.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the finding of negligence returned by the learned Tribunal is borne out from the evidence recorded. But the Tribunal has erred in dismissing the petition filed on behalf of deceased-*Priyanka* and *Happy* under Section 163-A of *the Motor Vehicles Act, 1988*, while adverting to the negligence aspect. It needs no reiteration that in these petitions under Section 163-A of *the Motor Vehicles Act, 1988*, the negligence aspect is not required to be considered.

9. In the facts and circumstances of this case, it is deemed appropriate to convert the petitions filed by injured-*Seema*, *Satinder* and *Santosh* under Section 166 of *the Motor Vehicles Act, 1988* to under Section 163-A of *the Motor Vehicles Act, 1988*.

10. In view of the aforesaid, the impugned Award is set aside with

directions to the Tribunal to treat the five claim petitions preferred by injured-*Seema*, *Satinder* and *Santosh* under Section 163-A of *the Motor Vehicles Act, 1988* and to proceed further in accordance with the law. The Tribunal shall expeditiously render the Award in the instant case.

11. With aforesaid directions, the five appeals preferred by injured-*Seema*, *Satinder* and *Santosh* are accordingly disposed of. It is clarified that service upon driver and owner of the vehicle in question be not insisted upon by the Tribunal as the negligence aspect is not to be considered while deciding petitions under Sections 163-A of *the Motor Vehicles Act, 1988*. To expedite the proceedings, let the parties appear before the Tribunal on 15th September, 2018.

12. With aforesaid directions, the above captioned five appeals and the pending applications are disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

AUGUST 31, 2018

v