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

Date of Decision: September 05, 2018

\+ **MAC.APP. 63/2018**

SHAMA & ORS. ..... Appellants

Through: Mr. Pankaj Kumar Deral &
Mr. Shailender Solanki, Advocates

Versus

GULSHER & ORS. (IFFCO TOKIO GENERAL INSURANCE CO LTD.) ..... Respondents

Through: Mr. A.K.Soni, Advocate

\+ **MAC.APP. 65/2018**

NAZRUDDIN ..... Appellant

Through: Mr. Pankaj Kumar Deral &
Mr. Shailender Solanki, Advocates

Versus

GULSHER & ORS. (IFFCO-TOKIO GENERAL INSURANCE CO LTD) ..... Respondents

Through: Mr. A.K.Soni, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals arise out of common impugned Award of 16th September, 2017, vide which claim petitions of legal

heirs/Claimants of deceased- *Nafees* and Injured- *Nazruddin* have been dismissed by Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* on the ground that the involvement of insured vehicle in the accident in question does not stand proved. To conclude so, the Tribunal has relied upon the evidence of eye witness/ Injured- *Nazruddin*, who in his evidence has stated that he did not see the registration number of the offending vehicle nor the driver of the said vehicle. FIR regarding the accident in question was registered on the statement of one –*Rahees*, brother of deceased, who had not witnessed the accident but somehow in the FIR, the registration number of the insured vehicle finds mention.

2. Since the above captioned two appeals arise out of common impugned Award of 16th September, 2017, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

3. During the course of hearing, it was put to appellants' counsel as to how the registration number of the insured vehicle figures in the FIR, when first-informant had not seen the accident and even the offending vehicle was not apprehended at the spot. But there was no satisfactory response.

4. Upon hearing and on perusal of impugned Award and the evidence on record, it appears that it is a case of hit and run. At this stage, counsel for appellants submit that the appeal filed by Claimants and the Injured be treated as one under Section 163-A of *the Motor Vehicles Act, 1988*.

5. In the facts and circumstances of this case, it is deemed appropriate to convert the petitions filed by Claimants and the Injured under Section

166 of *the Motor Vehicles Act, 1988* to one under Section 163-A of *the Motor Vehicles Act, 1988*.

6. In view of the aforesaid, the impugned Award is set aside with direction to the Tribunal to treat the claim petitions preferred by legal heirs of deceased *Nafees* and Injured- *Nazruddin* under Section 163-A of *the Motor Vehicles Act, 1988* and to proceed further in accordance with the law. It is expected that the Tribunal shall proceed in these claim petitions with expedition. Needless to say that the negligence aspect is not required to be gone into, while deciding the claim petitions, while treating them under Section 163-A of *the Motor Vehicles Act, 1988* and an opportunity be granted to Claimants and Injured if they wish to lead any evidence. The parties through their counsel shall appear before the concerned Motor Accident Claims Tribunal on 6th October, 2018. Records be remitted back forthwith.

7. With aforesaid directions, the above captioned two appeals are accordingly disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

SEPTEMBER 05, 2018
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