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

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Decided on: 18.07.2019

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MAC. APP. 122/2019

PUSPA & ORS.

..... Appellants

Through: Mr. Muish Kr. Sharma, Advocate.

Versus

MUBARIK & ORS (HDFC ERGO GENERAL INSURANCE CO LTD.)

..... Respondents

Through: Mr. Sameer Nandwani Advocate for
Respondent – Insurance Company.

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MAC.APP. 325/2019 & CM No.10037/2019

HDFC ERGO GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Sameer Nandwani Advocate

Versus

PUSPA & ORS.

..... Respondents

Through: Mr. Muish Kr. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. In MAC.APP. No. 122/2019 the claimants seek enhancement of the compensation of Rs.5,00,000/- awarded on 11.12.2018 by the learned Tribunal while in MAC. APP. No. 325/2019 the insurer seeks setting aside of the award.

2. Both the appeals are arising out of the same accident and same award and hence, they are being disposed-off by this common order.

3. In MAC. APP. No. 122/2019, the appellants' claim for compensation under section 166 of the Motor Vehicles Act, 1988 (MV Act), was declined on the ground that there was no evidence of the offending vehicle being driven in a rash and negligent manner, which caused the fatality.

4. The impugned order has held that since PW2 - Rajkumar was not mentioned as a witness in the chargesheet filed by the police on account of fatality, therefore, his evidence would not be admissible and/or be of no consequence. This Court is unable to agree with the said reasoning and conclusion in view of the dicta of the Supreme Court in ***Vimla Devi & Ors. vs. National Insurance Company Limited & Anr., Civil Appeal No.11042/2018***, which held that the nature of criminal proceedings and the claim of damages under the Motor Vehicles Act, 1988 are two separate proceedings under different statutes and the nature of evidence to be led in either of them and appreciation of material on record are on different parameters.

5. Claimant – Puspa's (PW1) case was based upon her statement alongwith that of an eye-witness i.e. PW2 – Rajkumar. The latter had stated in his evidence affidavit that:-

“1. That the deponent is the witness in the above noted matter and being eye witness is well conversant with the facts of the case and competent to sewer the present affidavit.

2. That the deponent is residing and running business of shattering near Bus stop on main road village Akalpur, Distt. G. B. Nagar, U. P.

3. That on 31.12.2017 I went to the shop of Sh. Jaypal Bhati (Purchune Ki Shop) at Bus stop on main road village Akalpur,

Distt. G. B. Nagar, U. P. for purchasing of house hold goods, at about 4.00 p. m. when I reached near Shop of Purchase, I saw that a Truck bearing No. UP 13AT 4101 came from Jhanjhar side and going towards Jewar side which was being driven by its driver at a very high speed and negligent manner and near speed barker the driver of said Truck overtake the another vehicle running on the road and hit a man on the other side of the road with a great force, who was standing beside the road at bus stop village Aakalpur and due to this force full impact the injured fell down on road and sustained fatal injuries in this accident.

4. That after the accident the driver of the above said Truck did not stop his Truck and tried to fled away from the spot but due to the huge noise made by me and other person present on spot, the driver of the said Truck unable to fled away and after a very short distance he was Caught hold by the public person and made a call to the Police.

5. That after some time police arrival on spot and inquired about the accident and the driver of the Truck bearing No. UP 13 AT 4101 handed over to the police officials and the injured removed to the Hospital.

6. That this accident has absolutely been caused due to rash & negligent driving of the driver of Truck bearing No. UP 13AT 4101.

7. That the I. O. of the case recorded my statements and on my instructions prepaid site Plan.

8. That this accident has seen by me through my necked eye as stated above and nothing has been conceal.

9. That the deponent has signed on this affidavit at point 'A' & 'B' and filed the copy of his Aadhar Card which is exhibited as Pw-2/1."

6. On an opportunity being given to the respondent, including the Insurance Company, as regards the aforesaid affidavit of 20.11.2018, no cross-examination was carried out by any of the respondents.

7. The statement of PW2 – Rajkumar went unchallenged. It would therefore be deemed to be correct. That being the position, the appellants have clearly established that the fatality was on account of rash and negligent driving of the offending vehicle. The FIR records a case of rash and negligent driving.

8. In view of the above, the appellants will be entitled for compensation under section 166 MV Act. Accordingly, the case is remanded to the learned Tribunal for calculation of the amounts payable in terms of the claim petition. The parties shall appear before the learned Tribunal on 26.08.2019.

9. The Court would expect that the learned Tribunal shall dispose-off the case at the earliest possible, preferably in six weeks after 26.08.2019.

10. Trial Court Records be returned to the learned MACT after retaining a digitized copy thereof.

11. In view of the above, the learned counsel for the appellant in MAC. APP. No.325/2009 does not press the appeal. Accordingly, it is dismissed as withdrawn. The statutory amount be returned to the appellant/insurance company.

NAJMI WAZIRI, J.

JULY 18, 2019

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