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

% *Decided on: 15.11.2019*

+ MAC.APP. 870/2019 & CM APPL. 48942/2019

SHAHANA & ORS

..... Appellants

versus

UNITED INDIA INSURANCE COMPANY LIMITED & ORS

..... Respondents

+ MAC.APP. 253/2019

YOGITA

..... Appellant

versus

UNITED INDIA INSURANCE CO LTD & ORS

..... Respondents

+ MAC.APP. 268/2019

HIMANSHU

..... Appellant

versus

UNITED INDIA INSURANCE CO LTD & ORS

..... Respondents

+ MAC.APP. 272/2019

MONIKA

..... Appellant

versus

UNITED INDIA INSURANCE CO LTD & ORS

..... Respondents

+ MAC.APP. 273/2019

MONIKA & ORS

..... Appellants

versus

UNITED INDIA INSURANCE CO LTD & ORS

..... Respondents

+ MAC.APP. 274/2019
YASHIKA @ DEEPIKA Appellant

versus

+ MAC.APP. 280/2019
MONIKA & ORS Appellants

versus

Through: Mr. Anshuman Bal, Advocate for appellants.
Mr. Pradeep Gaur, Advocate for Insurance Company/R-1.

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. These appeals impugn the award of compensation dated 22.11.2018 passed by the learned MACT in MACP No. 14571/15, inasmuch as the learned Tribunal has awarded compensation under section 163-A of the Motor Vehicles Act, 1988 apropos the Claim Petition filed under section 166 of the Act. The rationale of the award was that the rashness and negligence apropos the offending vehicle was not proven.

2. The facts of the case are that the offending vehicle, which was carrying passengers, hit against the road divider and overturned, resulting in fatalities of three occupants and injuries to four of its passengers. It has been the appellants' case that the vehicle was being driven at a very high speed, rashly and negligently. It hit against the road divider at an immense speed

and turned over, resulting in the aforesaid loss of life and grievous injuries. The nature of the accident itself proves rashness and negligence on the part of the driver. It would not require any corroboration by the third party. A complaint was made to the police and subsequently the FIR was registered after verifying the accident and the resultant loss of lives and injuries. The two injured/eye-witnesses, namely, Ms. Monika and Ms. Yogita, aged 24 and 19 years old, respectively, daughters of Late Mr. Sabajeet Singh had both deposed identically by way of affidavit in their respective evidence, which reads as under:

“STATEMENT OF PETITIONER BY WAY OF AFFIDAVIT.

1. *That on 09.11.2014 at about 4:20 AM, I alongwith Sabajeet Singh my father, Shiv Kumari my mother and my brother Himanshu and my sisters Yogita and Yashika @ Deepika and other passengers were going in car bearing NO. DL-2CAB-1232 from Delhi to Mathura. The car was being driven by its driver at a very high speed, most rashly and negligently. All the occupants of the car requested the driver to drive the car at slow speed but he did not listen to them. When the car reached KM+750 Noida to Agra Expressway, Noida, U.P. Due to high speed of the car, the driver lost control over the car and hit against divider. In the accident, my father Sabajeet Singh received serious injuries in the accident. He was doing business. He was earning Rs. 20,000/- per month. After the accident, he was under treatment in Lok Nayak Hospital where he died after one and half months after the accident. My mother, Shiv Kumari also received serious injuries in the accident. She was also admitted in Lok Nayak Hospital. She died in the hospital after treatment of 2 ½ months. A sum of Rs 2,00,000/- was spent on her treatment, special diet and conveyance on my mother.”*

6. *That due to the death of our parents and injuries to my brothers and sisters, we have suffered great pain, agony, mental torture and shock. We have lost love affection and company of our parents. Love cannot (sic) compensated in terms of money, however we are claiming compensation on account of loss of love affection and company of our parents, loss of enjoyment of life, loss of future prospects, loss of future pecuniary benefits and other special and general damages as admissible under the law."*

3. A large portion of their cross-examination was apropos the medical treatment and the expenses incurred for the same. The only portion of Ms.Yogita's cross-examination which deals with the accident itself, is as under:-

"We were 9 persons in total including the driver travelling in the Tavera Car. I do not know the name of the driver. The owner of the vehicle was known to my father. I do not remember as to how much amount was paid by my father to the driver/owner while engaging the said Tavera Car for destination Mathura from Delhi. It is wrong to suggest that some other vehicles with unknown numbers had caused the accident by hitting our Tavera Car or this car had not hit against the divider due to negligence of its driver. It is wrong to suggest that the driver of the Tavera Car being implicated in these cases as an accused/offending driver for its no fault. It is wrong to suggest that the driver of the car was driving at low speed with proper care. None of the passengers of the car had called the police. Police did not arrive at the place of the accident. The toll tax officials took all the passengers including the driver to District Hospital, Mathura. Police did not record my Statement about the happening of accident. Police also never took me to the spot of the accident for preparing the

sketch/site plan of the accident and police also never took me to any criminal court concerning this vehicle or accident to depose as an eye witness.”

4. Ms. Yogita had also denied the suggestion that she had deposed falsely apropos various details concerning the claims of the deceased mother-Shiv Kumari.

5. What emanates from the above is that her testimony apropos the manner, cause and nature of the accident and the extent of the resultant injuries and the other fatalities, as claimed, remains unshaken. She had deposed that the injured were taken to the District Hospital, Mathura, Uttar Pradesh. The Court would note that the impugned order has relied largely on the outcome of the criminal proceedings, in which the rashness and negligence of the driver of the offending vehicle could not be established despite notice having been served upon the injured. The criminal proceedings were held in Mathura. The claimants are resident of Delhi. They were not able to be present at Mathura to attend the criminal proceedings. Their non-appearance could at best result to benefit the accused, but would not necessarily affect their own claim petition. The nature of proof in criminal proceedings is of a more exacting degree, wherein the prosecution's case has to be proven beyond reasonable doubt to result in conviction, whereas in the proceedings under section 166 of the Motor Vehicles Act, the preponderance of probabilities is to be seen.

6. The Court would note that for the complainants/claimants not being able to appear before the learned Mathura Court, there could be any number of reasons including the fact that both the young ladies had suffered the demise of their parents; they were suddenly exposed to shoulder the

responsibilities of their own care all by themselves, they could not necessarily know as to how to manage their legal affairs especially in a different State and to engage a counsel, etc.; they were themselves living under shock, pain and injuries; the elder of the claimants i.e. the 24 year old Ms. Monika is near 100% physically disabled. That being the position, only Ms. Yogita (19 years) was the one left to fend for herself and to take care of her elder sister and to manage the legal affairs in a different State. In these compelling circumstances, that she may not have been able to attend to the summons issued by the Criminal Court. Be that as it may, what needs to be ascertained in a case of this nature is the manner in which the accident occurred, i.e. whether it was because of rash and negligent driving by the driver. That the offending vehicle hit the road divider at a great speed and turned over, resulting in fatalities and grievous injuries, is evident from the description of the accident at site and is corroborated by the clear deposition of both eye-witnesses i.e. Ms. Yogita and Ms. Monika.

7. In the circumstances, there is no manner of doubt apropos the rashness and negligent driving of the offending vehicle by its driver and the same is clearly established. The learned Tribunal has erred in holding otherwise.

8. The other issue is apropos the insurance cover of the offending vehicle. It had been insured by way of Policy No. 041781/31/13/01/00032624 valid from 22.03.2014 to 21.03.2015. The cheque issued towards payment of premium of Rs. 9,129/- drawn on Punjab National Bank, Kashmiri Gate Branch, was dishonoured upon presentation. The policy was cancelled a week thereafter. The accident occurred on 09.11.2014. It is the appellant's case that the intimation regarding cancellation of the insurance policy to the

Regional Transport Authority in terms of section 147 (5) of the Motor Vehicles Act, 1988, was never given. According to the appellants/claimants, the said insurance policy would still cover the third party risk because no intimation was given to the registering authority or the State Government under section 147 (5) of the Act. The learned counsel for the appellants/claimants relies upon the dicta of this Court in ***Reliance General Insurance Co. Ltd. vs. Dr. Sarjeet Singh Thakur & Ors.*** in MAC. APP. 418/2012 decided on 20.04.2012, which held as under:-

“4. The Appellant’s case was that since the cheque issued towards the premium of the Insurance Policy was dishonoured, the Appellant had no liability to pay. Admittedly, the Insurance Company did not send any intimation to the RTO as required under Section 147 (4) regarding non-issuance of the policy of Insurance in pursuance of the cover note issued by the Appellant.”

9. In the present case, simply because the policy had been cancelled and so intimated to the owner of the vehicle, the third party liability of the insurer was discharged. This discharge of the insurer is set aside because the issue has not been adequately dealt with. It will be open to the parties to agitate this issue before the learned Tribunal.

10. In view of the above, the impugned order is set aside. The case is remanded to the learned Tribunal to award compensation on merit under section 166 of the Act. The parties are at liberty to lead their evidence in this regard. However, looking at the nature of the case and the fact that the accident occurred on 09.11.2014 i.e. nearly half a decade ago, this Court would request the learned Tribunal to endeavour to dispose-off these Claim Petitions preferably within a period of four months from the date when the

case is next listed before it. The learned counsel for the parties further submit that they shall assist the learned Tribunal on every date when the cases are so listed and shall not seek any adjournment whatsoever.

11. The parties shall appear before the learned Tribunal on 29.11.2019.
12. Let the LCR be returned.
13. The appeals are disposed-off in the above terms.

NAJMI WAZIRI, J

NOVEMBER 15, 2019

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