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

+ **MAC.APP. 356/2019**

NISHA AGGARWAL & ORS

..... Appellants

Through: Mr. Kamlesh Kumar Maurya,
Advocate.

versus

VIJAY PAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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13.03.2019

This appeal is preferred against the judgment/award dated 14.12.2018 passed by MACT Karkardooma Courts, New Delhi. The respondent, who was the owner-cum-driver of the offending Tempo No.HR 69 7507, was the only party respondent before the Tribunal, inasmuch, as the offending vehicle was not insured.

As regards, the offending vehicle having been run rashly and negligently, the Tribunal has returned a finding against the appellants, as follows :

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Issue No.1:-

1. Whether deceased Sanjay Kumar Aggarwal died on account of injuries sustained in accident took place on 19.09.2016 at about 8:30 PM at in front of Vaishali Dhaba, near Flyover Murthal, Distt. Sonapat, Haryana

of PS Murthal within the jurisdiction of PS Murthal due to rash and negligent driving of vehicle No.HR 69 7507 by respondent No.1? OPP.

8. To succeed in the claim petition, it is for the claimant to prove that vehicle which caused the accident was being driven rashly and negligently by its driver/respondent. PW-1/wife of deceased deposed about the facts of the case but the testimony of witness is not sufficient to prove the rash and negligent driving by respondent. PW-1 is not an eyewitness of the accident. Petitioner has not summoned and examined the eye-witness of the accident to prove the rash and negligent driving of the respondent.

Ld. counsel for respondent vehemently argued that the petitioners are not entitled for compensation as rash and negligent driving of respondent is not proved at all and relied upon the judgments reported as The Oriental Insurance Company V/s Meena Variyal & Ors., Minu B. Mehta & Ors. V/s Balkrishna Ramchandra Nayan & Ors., Surender Kumar Arora & Ors. V/s Dr. Manoj Bisla & Ors., & Oriental Insurance Company Limited Vs Premlala Shukla & Ors. in support of contentions.

After perusal of the records and testimony of the witnesses, it appears that the negligence of the respondent is not proved therefore the claim petition filed by petitioner for grant of compensation is treated as petition U/s 163 A MV Act for grant of compensation. Issue No.1 is disposed off accordingly.”

During the course of hearing, learned counsel for the appellants does not advert to any material on record which would establish rash and negligent driving of the offending vehicle by the respondent. In other words, he does not assail the finding returned by the Tribunal on issue No.1. His only contention is that towards the claim of damages, the income of the deceased

should have been taken into account. He however forgets that the claim, in the absence of the rash and negligent driving attributable to the respondent having been proved, the claim, at the most could be awarded only under Section 163A and that is how, the Tribunal has awarded the fixed compensation of Rs.5,00,000/-.

No infirmity in the given facts and circumstances can be found in the impugned judgment-Award.

The appeal is therefore, dismissed.

A. K. CHAWLA, J

MARCH 13, 2019

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