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

% *Decided on: 14.11.2019*

+ **MAC.APP. 522/2019 & CM APPL. 47865/2019**

POONAM DEVI & ORS

..... Appellants

Through: Mr. Peeush Sharma and Mr. Bharvi
Thakur, Advocates.

versus

SHRIRAM GENERAL INSURANCE COMPANY LIMITED &

ANR

..... Respondents

Through: Mr. Arun Yadav, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal seeks enhancement of the award of compensation dated 01.10.2018 passed by the learned MACT in MACP No. 27/16, on the ground that there is ample evidence led by the claimants to prove that death of the deceased was caused on account of rash and negligent driving of the truck driver. It is argued that, therefore, the compensation should have been awarded under section 166 of the Motor Vehicles Act, 1988 and not under section 163 A.

2. For a claim to succeed under section 166, the rash and negligent driving of the offending vehicle, leading to the injury/fatality ought to be shown. The Court would note that the claimants' witness, PW-2-Sanno Kumar, deposed *inter alia*, that he was sitting in the rear side of the goods vehicle which was carrying about 5-6 persons. He knew the deceased who was sitting in the front side of the vehicle. When the truck reached a village

between Dhosni and Bahadurpur, the vehicle stopped to provide temporary relief to the occupants of the vehicle and while the deceased was under a tree answering the call of nature, the vehicle suddenly started moving and hit the tree; due to this impact, a branch of the tree fell on the deceased due to which he sustained grievous injuries. The unfortunate accident occurred at about 5:15 am on 10.08.2015. The injured was rushed to a local hospital for treatment. Subsequently he was shifted to Dr. Ram Manohar Lohia Hospital, Delhi, where he was passed away on 19.08.2015. Interestingly, the FIR was registered on 29.10.2015 i.e. approximately 2½ months later. This delay is inexplicable alongwith the fact that the eye-witness-PW2, did not disclose to anybody at all apropos the date, time and the manner in which the accident occurred.

3. The Court would further note that ordinarily, people who travel together from one boarding point, or one city for a pilgrimage to a city such as Haridwar, are known to or get to know each other, and in an accident of this nature surely, the deceased would be active in extending all ready assistance to each other. But the conduct of PW2 was quite to the contrary. PW2 admitted that he had not seen the manner in which the accident occurred, since he was sitting in the rear side of the vehicle. Same is the position of PW-3, Neeraj Kumar, who was identically placed.

4. Quite clearly, neither of the two persons who were eye-witnesses to the accident and their deposition three years after the accident, without intimation to any authority in the interim, is doubtful and cannot be relied upon. In the circumstances, for the learned Tribunal to have treated the case

as that of payment of compensation under section 163A of the Motor Vehicles Act, 1988 cannot be flawed.

5. The appeal is without merit and is accordingly, dismissed.

NAJMI WAZIRI, J

NOVEMBER 14, 2019

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