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

% *Decided on: 26.09.2019*

+ **MAC.APP. 718/2019 & CM APPL. 35981/2019**

SHOBHA & ORS

..... Appellants

Through: Mr. D.K. Sharma, Advocate.

versus

**SATISH KUMAR & ORS (IFFCO TOKIO GENERAL
INSURANCE CO LTD)**

..... Respondents

Through: Mr. Pankaj Gupta, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The award of compensation dated 23.04.2019 passed by the learned MACT in MACP No. 76224/2016 is impugned on the ground that it has erred in not taking into consideration the relevant records. The appellant contends that PW-2- Naveen Gulia was an eye-witness, and his deposition clearly proved that he had seen the motor-vehicular accident. The impugned order discussed the evidence led by the claimant, *inter alia*, reads as under:-

“12. Admittedly, Smt. Shobha, wife of deceased, was not an eye-witness to the accident. So far as the testimony of PW2/Naveen Gulia is concerned, he claimed himself to be the eye-witness to the accident, however, his testimony is neither credit worthy nor reliable. The perusal of the FIR and charge-sheet reveals that no eye-witness was found at the spot of the accident and that on the basis of the statement of one Anuj

(who was not an eye-witness) that he had subsequently come to know of the involvement of vehicle bearing registration No.HR-63B- 2553 in the accident, the involvement of vehicle bearing registration No.HR- 63B-2553 was shown. There is nothing on the record which reflects that the statement of PW2/Naveen Gulia was recorded by the police at any point of time. In his cross-examination, it was categorically admitted by him that he had come to depose before this court on the asking of the counsel for petitioner. He also admitted that no call was made by him after he had allegedly witnessed the accident even though he was carrying a mobile phone at the time of the accident. Further, it is worthwhile to mention here that his testimony is marred with contradictions. On the one hand, it was testified by him that he was standing on the opposite side of the road when the accident took place and in the same breath, it was testified by him that "he was travelling in a bus to go for his coaching and that he had got down from the bus after seeing the accident".

13. Moreover, petitioners failed to examine Anuj, on whose statement the involvement of offending vehicle was shown.

2. What emanates from the above is that the person who identified the vehicle was Anuj. The Court would note that on the one hand, Anuj had stated that he was standing on the opposite side of the road when the accident took place; on the other hand, he stated that he was travelling in a bus to attend his coaching classes and after seeing the accident he had gotten down from the bus. Him being an absolute stranger to the injured, his getting down from the bus much to his neglect of the coaching class (for which he would be paying some fees) is inexplicable. After seeing the accident, he did not call the police; he did not inform anybody; he did not assist the victim and did not even take him to the hospital. So, the best motive and the actual factum of getting down from the bus is clearly in doubt. Furthermore, it is

on the basis of the statement of Anuj, who incidentally does not find any mention in the chargesheet, that the claimants built their case upon. The link between an absolute stranger-Anuj and PW-2-Naveen Gulia and/or claimant is not shown. It is also observed that PW-2-Naveen Gulia, who claimed to be an eye-witness, too is not mentioned in the chargesheet. Like Anuj, PW-2 too did not inform the police or family members of the victim, or in any way make known to a public authority, prior to the date of his deposition before the Court, that he was an eye-witness to the accident. Indeed his deposition admits that he was called to the Court by the counsel for the claimant. For a claimant to succeed under section 166 of the Motor Vehicles Act, 1988, the claimant has to prove that the injury or fatality was on account of rash and negligent driving of the offending vehicle. In the present case, there is no evidence whatsoever apropos the offending vehicle i.e. the offending vehicle was not identified by any eye-witness or other admissible evidence.

3. In the circumstances, no case is made out to interfere with the impugned order which has dismissed the appellants' claim for compensation.

4. There is no merit in the appeal. It is, accordingly, dismissed. The pending application is also dismissed.

NAJMI WAZIRI, J

SEPTEMBER 26, 2019

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