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

% *Decided on: 17.09.2019*

\+ MAC.APP. 788/2019, CM APPL. 41422/2019 & CM APPL. 41423/2019

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

RAGHAV SINGH & ORS ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 10.05.2019 passed by the learned MACT in Case No. 599/2017 on the ground that the motor vehicular accident which resulted in one fatality and injuries to the other pillion riders was caused because of the scooter rider was drunk. The appellant relies upon the noting in the MLC to the effect that there was smell of alcohol in his breath.

2. On a query put to the learned counsel for the appellant whether the deceased had died on the spot and/or had been brought to the hospital and then declared dead, the answer is in the affirmative for the latter. In the circumstances when there is no breath, the likelihood of

detection of alcohol in the breath is an impossibility. Even if there was smell of alcohol near the mouth of the deceased, the degree of the alcohol in his body should have been tested to ascertain whether it was in excess of the permissible limits. In the absence of any evidence in this regard, the drunkenness of the rider cannot be presumed. Accordingly, no culpability or negligence can be attributed to the deceased rider. The learned counsel for the appellant submits that MLC of the injured too recorded detection of alcohol in his breath and a chargesheet was filed against him. Be that as it may, for a rider on a motorcycle or for a passenger in motor vehicle to have alcohol in his breath is not prohibited. It is impairment of the driving ability of the rider or the driver that needs to be determined. That determination was not done and cannot be done now.

3. In the circumstances, no case is made out for to interference with the impugned order. The appeal is without merit and is accordingly dismissed.

4. The statutory amount of Rs. 25,000/-, alongwith interest accrued thereon, be deposited into the 'AASRA' fund.

NAJMI WAZIRI, J

SEPTEMBER 17, 2019

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