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

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Decided on: 25.07.2019

+ **MAC.APP. 532/2016**

KAMAR JAHAN AND ORS

..... Appellants

versus

NATIONAL INS CO LTD AND ANR

..... Respondents

+ **MAC.APP. 550/2016**

SHABANA AND ORS

..... Appellants

versus

NATIONAL INS CO LTD AND ANR

..... Respondents

+ **MAC.APP. 543/2016**

RENU DEVI AND ORS

..... Appellants

versus

NATIONAL INS CO LTD AND ANR

..... Respondents

Through: Mr. Anshuman Bal, Advocate
for appellants.

Mr. Arihant Jain and Ms.

Shantha Devi, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellants have impugned an order dated 17.12.2015 dismissing the claim for a compensation under 163A of the Motor Vehicles Act, 1988.

The facts of the case are that three persons were attending to the punctured tyre of a truck near a petrol station. They were all employed by the owner of the truck. While they were standing near the truck and the mechanic was carrying out the repairs, a TATA Sumo car came charging towards and hit three of them; two died on the spot, one was severely injured but later he too succumbed to his injuries. But while still conscious he had stated to the police, that they were hit by a white TATA Sumo vehicle which was being driven rashly and negligently at a high speed. On his statement, FIR No. 197/08 u/s 279/337/304-A IPC was registered at P.S. Seelampur, New Delhi. Notably, the number of the offending vehicle was not given. In due course, the truck's owner-Mr. Zaffaruddin, had told the police that the number of the offending vehicle was UP-16S-9610. As to how he came to know of this number remains a mystery. Whether it was the same vehicle or not was not established. An Untraced Report was filed.

2. The learned Tribunal has reasoned as under:-

“This being a petition u/s. 163A MV Act no rashness/negligence is to be proved on the part of offending vehicle and it is sufficient for grant of compensation u/s, 163A MV Act that there is an accident involving a motor vehicle and as a result of such accident death or permanent disability results to the victim. In the present case, there is nothing on record to show that the deceased persons namely Liyakat, Dinesh @ Dinesh Rai and Shabir died on account of injuries sustained in motor accident which occurred on 19/05/2006 near Shastri Park, Petrol Pump, Delhi involving vehicle bearing no. UP 16S 9610 being owned by respondent Subhash Chand and insured with National Insurance Co. Ltd. Respondent no. 2 Sh. Subhash Chand has examined himself as R2W1 and in his affidavit he has clearly stated that accident in question never occurred with his vehicle and petitioners have wrongly implicated him in the present case. He has further stated that on

the day of accident his vehicle was lying parked in front of his house. During cross-examination also he has stated that regarding FIR No. 197/08, no police official had ever contacted him or served any notice u/sec 133 MV Act and he has denied the suggestion that his vehicle was involved in the accident on 19/05/2008. No eye witness has been examined on behalf of petitioner to show that vehicle bearing no. UP16S 9610 was involved in the accident. R3W1 HC Rakesh Kumar has proved the final report and case diary which also shows that untrace report was filed in the said criminal case by the 10 and the same was forwarded by ACP P.S. Seelampur on 29/08/2008. Thereafter, also an application was moved by the owner of vehicle bearing no. HR 51GA 1194 Jaffruddin that according to him registration number of Tata Sumo is UP 16S 9610. Matter was further investigated by the 10. However, till date no conclusion has been arrived by the investigating agency that the vehicle bearing no. UP 16S 9610 was involved in the accident. Owner Jaffruddin has nowhere stated in his complaint made to SHO P.S. Seelampur as how he came to know about the number of offending vehicle. It is not the case of petitioner or Sh. Jaffruddin that he was present on the day of accident and therefore, is eye witness and had witnessed the accident and thus, knew the number of offending vehicle. How owner of truck bearing no. HR 51 GA 1194 came to know about the number of vehicle has not been explained. Sh. Jaffrudin has not been examined as a witness in the present case and in the absence of any eye witness and the fact that even police investigation has not given any conclusive finding regarding involvement of vehicle bearing no. UP 16S 9610, I am unable to conclude that the deceased persons had met with accident with vehicle bearing no. UP 16S 9610. The factum of accident as well as the death of deceased persons have not been disputed by the respondents. It is an admitted case that on 19/05/2008 deceased persons namely Liyakat, Dinesh @ Dinesh Rai and Shabir had met with an accident involving truck bearing no. HR 51GA1194 and the accident had proved fatal for them. However, the involvement of vehicle bearing no. UP 16S 9610 has not been proved on record.”

3. Quite clearly, in the absence of the number of the offending vehicle being mentioned or the vehicle insured by the respondent being identified, no liability can be fastened upon the insurer, the owner or the driver of the said vehicle i.e. UP 16 S 9610.

4. This Court finds no reason to conclude otherwise because there is nothing to initiate a case against the accused vehicle owner. The appeal is without merit and is accordingly dismissed.

JULY 25, 2019

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NAJMI WAZIRI, J



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