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

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Decided on: 01.08.2019

+ **MAC.APP. 542/2018**

MUKESH KUMAR

..... Appellant

Through: Mr. Saurabh Kansal, Advocate.

Versus

**JAI BHAGWAN MEHRA & ANR (UNITED INDIA INSURANCE
COMPANY LIMITED)**

..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the order dated 24.04.2018 dismissing the appellant's claim for compensation under section 166 of the Motor Vehicles Act, 1988. He had claimed a compensation of Rs. 20,00,000/-, for the injuries suffered by the claimant on account of an accident of the insured motorcycle, whereon he was riding pillion on 29.12.2014 in a thick fog near Village Savda & Naya Gaon Bye-pass Road, Haryana, a motor car, being driven in a rash and negligent manner, suddenly came from the opposite direction without blowing any horn and the glare of its headlight blinded the motorcyclist, causing disbalancing of their motorcycle, resulting in both

falling down and sustaining injuries. The appellant alongwith the motorcyclist were rushed to a hospital in Bahadurgarh, District Jhajjar, Haryana.

2. The claim is against the driver of the offending motor vehicle, for driving it in a rash and negligent manner. However, this argument is untenable because it is quite implausible for anybody to be blinded by the glare of the headlights of a car in a thick fog. Besides, all prudent motor vehicles' drivers/or motorcyclists would ordinarily drive at a speed lesser than usual, in a thick fog. Indeed, the thicker the fog, the lesser the speed.

3. The Court would note that the appellant, who sat on the motorcycle of his friend or acquaintance, is a gratuitous passenger. Apart from merely stating that the offending vehicle was being driven in a rash and negligent manner, no other allegation has been made nor has any evidence been led in this regard.

4. As already stated, it is implausible for somebody to be blinded in a thick fog by sharp light, on the contrary, what is shown from the record is that there was a speed breaker which, perhaps, the motorcyclist did not spot and because of which, the riders fell down and sustained the injuries. The impugned order has dealt with the issue as under:-

“10. I have perused the complaint given by petitioner to the police Ex.PW1/5. In the said complaint, it is stated by the petitioner that on 29.12.2014 he was going on a motorcycle bearing no.DL-S-7762 as a pillion rider from Village Gangarwa, District Jhajjar, Haryana to Village Nilothi. At about 08:00 pm to 08:30 pm, when they reached near Village Naya Gaon bypass road, Haryana, he saw one car coming from front side at a high speed, which was being

driven by its driver in a rash and negligent manner and in a zigzag manner. Due to glare of headlight of that car, their motorcycle got disbalanced and struck against the speed breaker.

11. Police recorded statement of Mr. Jai Bhagwan (respondent no.1) on 29.12.2014 itself in which he stated that on 29.12.2014 he and Mukesh Kumar were going on a motorcycle bearing no.DL-S-7762 which was being driven by him and Mukesh Kumar was sitting as a pillion rider and at about 08:00 pm to 08:30 pm, when they reached near Village Naya Gaon bypass road, Haryana, suddenly glare of headlight of one car struck his eyes and due to that he could not see the speed breaker and his motorcycle struck against the speed breaker and got disbalanced and they sustained injuries.

12. In the complaint given by the petitioner to the police, petitioner has not stated anything about rash and negligent driving of respondent no.1 rather he has only stated about rash and negligent driving of that car which was coming from front side. Further, the date on which the application has been given by the petitioner to the police has not been mentioned. It seems that the petitioner has improved his version later which is not in consonance with his statement. Hence, it is clear that although the accident took place and petitioner suffered injuries in that accident the accident did not cause (sic) due to rash and negligent driving of motorcycle no.DL-11SE-7762. This inter-alia means that petitioner has not been able to prove that he suffered injuries on account of rash and negligent driving of respondent no. 1.”

5. What emanates from the aforesaid discussions is that nothing has been brought on record to prove the rash and negligent driving of the offending vehicle. Therefore, no case is made out for interfering with the impugned order.

6. The appeal is without merit and is accordingly dismissed.

AUGUST 01, 2019

AB

NAJMI WAZIRI, J.

