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

% *Decided on: 29.08.2019*

+ MAC.APP. 727/2018 & CM APPL. 31680/2018

THE NEW INDIA ASSURNACE CO LTD Appellant

Through: Mr. Parveen Kumar Mehdiratta,
Advocate.

versus

MUNNI BHANDARI & ORS Respondents

Through: Mr. S.N. Parashar, Advocate for R-1
to R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation passed by the learned MACT on 09.05.2018 in MACT No. 14706/15 on the ground that there was no proof of negligence on the part of the driver of the insured vehicle. The said vehicle met with an unfortunate accident, which resulted in the demise of three occupants. The owner/driver of the vehicle stated that some other vehicle had struck his insured vehicle, which resulted in the fatalities. However, no proof was led in this regard. The Investigating Officer had deposed that despite his best efforts, no other vehicle was traced which led to the said fatalities.

2. The impugned order has considered the issue as under:-

“8. To succeed in the claim petition in view of Section 166 of the MV Act, it is for the claimant to prove that vehicle

which caused the accident was being driven rashly and negligently by its driver. Wife of deceased i.e. petitioner No.1 deposed about the facts of the case. She was cross-examined by Ld. Counsel for respondents but the witness is not an eyewitness. PW -2 has been examined as an eyewitness of the accident. PW-3 was summoned and examined who proved ITR of the deceased and his income. Ld. Counsel for insurance company summoned the IO to prove that accident was not caused due to rash and negligent driving of respondent No. 1 but no plausible explanation during cross examination come on record as to how the accident was caused. It is also admitted by ld. counsel for insurance company that other connected cases regarding the death of the same accident of other claimants has been settled by the insurance company. The question is asked as to when there was no accident or liability of insurance company, how the said matter was settled but no reasonable explanation is furnished in this respect. On the other hand, the testimony of RW did not rebut the testimony of PW to deny the claim of the petitioner and mere denial is not sufficient to rebut the claim of the petitioner. No witness was produced or examined by respondents as well to prove as to how accident occurred due to the negligence of the deceased; the respondent No. 1 was not at fault and was not driving the vehicle in rash and negligent manner. There is no reason to disbelieve the testimony of witnesses. I have gone through the record and documents in respect of the accident caused to the petitioner which is prima facie suggestive of negligence of respondent No. 1 in driving the vehicle at the time of accident.

Relied judgment in (Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.. (2009) 13 SC 530 and the judgment in Parmeshwari v. Amir Chand (2011) 11 SCC 635 and Kusun Lata v. Satbir, (2011) 3 SCC 646).

Hon'ble Supreme Court in Bimla Devi and Ors. v/s Himachal Road Transport Corporation and Ors. (2009) 13 SC 530 held as under:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of any accident caused by a particular bus in a particular manner may not be possible to be done by the claimant. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

3. What emanates from the above discussion is that the insurance company has settled claims apropos demise of two of the three occupants, who died in the unfortunate accident. This matter is pursued against the third occupant, who too died in the same accident. The insurance company has led no plausible explanation in the cross-examination as to how the accident was caused. It was the contention of the claimants that the accident had been caused due to negligence of the driver. If the negligence of some other vehicle was found, it would have been upon the owner/driver and the insurance company to lead the evidence in that regard. In the absence of any such evidence against the contentions of the claimants, the Trial Court rightly concluded that the claimants' evidence would not be disbelieved and that the documents on record were, in the first instance, suggested on negligence of the owner/driver. Most significantly, the insurance company has admitted its liability apropos two of the three occupants, who had lost their lives. Therefore, singling out these claimants who are identically placed with the kin of the other two deceased is untenable.

4. In view of the above, there is no merit in the appeal. It is, accordingly, dismissed.

5. Statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' fund.

6. Pending amounts be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.

AUGUST 29, 2019

RW

NAJMI WAZIRI, J



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