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

% **Judgment delivered on: 26.03.2019**

+ **MAC. APP. 792/2018**

SEEMA MISHRA & ORS Appellants

Through Mr. Shekhar Aggarwal, Advocate.

versus

MANOJ KUMAR @ MANOJ KUMAR CHAUDHARY & ANR

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

1. By the instant appeal, the appellants assail the judgment-Award dated 28.05.2018 passed by MACT, Karkardooma Court, whereby, a petition under Sections 166 and 140 of the Motor Vehicle Act, 1988, in short 'the MV Act', seeking compensation on account of death of Vinodanand Mishra, in short 'the deceased', purportedly, on account of injuries sustained by him in a motor accident, was dismissed.

2. Concisely, the relevant facts are that the claimants filed the petition seeking compensation on the premise that on 04.05.2015 at about 6:30a.m., when the deceased on his bicycle was going for his duty to Mohan Nagar, U.P. and reached MR Hyundai cut, Shalimar Garden, Sahibabad, U.P., he was hit by a vehicle

bearing registration No.DL 5CK 4003 from the rear, having been driven rashly and negligently, and, on account of the consequent injuries, he died. The respondents disputed the involvement of the subject vehicle and appreciating the evidence adduced on record, the Tribunal dismissed the petition, returning a finding that the appellants had failed to establish that the deceased had sustained injuries on account of rash and negligent driving of vehicle No.DL 5CK 4003. To arrive at such findings, the relevant observations made by the Tribunal in the impugned judgment-Award are, as under:

"9. To succeed in the claim petition and in view of section 166 of the MV Act, it is for the claimants to prove that vehicle which caused the accident was being driven rashly and negligently by its driver/respondent No.1. PW-1 is not an eyewitness of the accident and her testimony is not sufficient to prove the rash or negligent driving by respondent No.1 causing accident. The witness deposed regarding the documents i.e. ID cards of the petitioners etc. Petitioner No.1 during cross examination admitted that police had not recorded her statement; she has received a telephone regarding the accident of her husband but the caller did not disclose his name.

The accident in question has been denied by respondent No.1 in WS. Other witness Sanjiv Kumar Jha/PW-2 has been examined as an eyewitness of the accident but the testimony of witness appears to be totally shattered during cross examination. The witness did not make complaint to the police after the accident. There is no criminal records like chargesheet, postmortem report, site plan, mechanical inspection report has been filed or proved as per law by the petitioner to prove the contentions. The complainant who is not an eyewitness has also not been produced or examined before the Tribunal and the PW-2

failed to depose regarding the hospital where he claimed to have admitted the injured. In nut shell, there is no material on record to connect the witness i.e. PW2 with the accident except his bald averments. There is no MLC nor any postmortem report on record (proved) to show any injury or death due to the accident. The involvement of the offending vehicle and negligent driving by respondent No.1 is also not proved as no chargesheet has been on record. The testimony of witness was further shattered during cross examination regarding the material aspects. Merely noting in the affidavit that respondent No.1 by rash and negligent driving caused the accident is not sufficient at all to prove the contentions for grant of compensation."

3. Besides the foregoing observations to return the finding, it is interesting to note that as per the FIR, which came to be registered on the complaint of one Sh.Rohit Mishra, who, for the reasons unexplained, has not been examined before the Tribunal, the FIR records involvement of one Swift VDi car bearing registration No.DL 2S 4003, which is other than the vehicle, which was allegedly involved in the accident. Interestingly, the claim petition by itself does not describe the vehicle involved in the accident, as its being either car, truck or a bus. There is also no explanation as to the difference in the registration number of the vehicle given in the petition and that appears in the FIR. No infirmity or perversity can therefore be seen in the impugned judgment-Award.

4. No merit. Dismissed.

(A.K. CHAWLA)
JUDGE

MARCH 26, 2019
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