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

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Decided on: 21.08.2019

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MAC.APP. 20/2018

KAMLESH DEVI & ORS. Appellants

Through: Mr. S. N. Parashar, Advocate.

Versus

MUNESH PARIHAR & ORS (NATIONAL INSURANCE CO LTD)

..... Respondent

Through: Mr. Manu Shahalia, Advocate for
Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the order of the learned MACT dated 21.07.2017 passed in MACT Case No.89/17 dismissing the appellants' claim petition under section 166 of the Motor Vehicles Act, 1988.

2. It is the appellants' case that the impugned order has erred in not taking cognizance of the FIR which was on the record and it was registered upon a complaint made by Constable Satish Kumar (PW2), who was an eye-witness to the accident. Therefore, the conclusion in the impugned order in paras 10 and 11 is erroneous on the face of the record. The order records, *inter-alia*, that "*none of the documents even like FIR, chargsheet,*

postmortem report, site plan, mechanical inspection report are either produced or proved by petitioners due to the reasons best known to them.”

3. However, the copy of the FIR was already before the learned Tribunal at page 147 of the LCR. It mentions the name of the complainant as “Constable 339 Satish Kumar”. This Satish Kumar is also PW2. The relevant portion of the translated copy of the complaint addressed to the Incharge/Inspector Police Station Kotwali, Hapur City, District Hapur, which formed the basis of the FIR, reads, *inter alia*, as under:-

“12. ...it is submitted that on today dated 25.11.2016, I Const. 339, Satish Kumar along with posted constable at PS Ct. 472 Rahul Kumar & Ct. 514 Arvind Kumar were going to Hapur Dehat Police Lines via Motorcycle No.DL-3SBE-2137 for the purpose of 100 number dial training. The said motorcycle was driven by Ct. Rahul Kumar and Ct. Arvind Kumar was sitting as pillion rider. At about 9.55 hrs., when we reached at Meerut Road Flyover, then a Tanker NO.UP-83-AT-5726 driven by its driver, rashly and negligent at high speed collided with motorcycle of Rahul from the front. Due to which, both the constables got injured gravely and motorcycle also got damaged. Tanker driver ran away with the tanker from the spot. I with the help of passer-by get admitted both the injured constables at Dev-Nandni Hospital and informed about the said incident to 100 number and Incharge, Police station Hapur Dehat. Seeing serious condition of Ct. Arvind Kumar get referred to Meerut from Dev-Nandni Hospital. Legal action may kindly be initiated by writing my report. Mobile No.8923931884 of the applicant Ct. 339 Satish Kumar, PS Hapur Dehat, District Hapur Dt. 25/11/2016. Note: I Ct.231 Jagvir Singh hereby certified that the contents stored in computer word to word as per copy of complaint.”

4. The learned counsel for respondent no. 3 – insurance company fairly submits that the said document was on the record of the learned MACT.

5. In view of the above, the Court is of the opinion that the case calls for a re-examination by the learned MACT. Accordingly, the impugned order is set aside and the case is remanded to the learned MACT for consideration in terms of the aforesaid and other documents, as may be. The learned MACT would consider granting opportunity(s) to the parties to lead evidence, if necessary. The parties shall appear before the learned MACT on 24.09.2019.

6. The appeal stands disposed-off in the above terms.

NAJMI WAZIRI, J.

AUGUST 21, 2019

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