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

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Decided on: 18.02.2020

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MAC.APP. 64/2019

SALMA & ORS

..... Appellants

Through: Mr. Idresh Ahemad, Adv.

versus

SURESH KUMAR & ORS

..... Respondents

Through: Mr. C.S. Parashar, Adv. for NIC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 28.09.2018 passed by the learned MACT in MACP No. 57/18. The appellants claim for compensation under sections 166 and 140 of the Motor Vehicles Act, 1988 was not granted for the reason that the rash and negligent driving of the alleged offending vehicle was never proven. Therefore, the compensation under section 163A of the Act i.e. Rs. 5 lacs was granted by the learned Tribunal. The impugned order has reasoned as under:-

“8. To succeed in the claim petition, it is for the claimant to prove that which caused the accident was being driven rashly and negligently by its driver / respondent. No. 1. PW 1/wife of deceased deposed about the facts of the case but the testimony of witness is not sufficient to prove the rash and negligent driving by the respondent No. 1. The PW-1 is not an eyewitness of the accident. Petitioner has examined the witness is not sufficient to prove the rash and negligently

driving of the driver. PW-2 during cross examination deposed that he did not call the police after the accident nor he taken the injured to the hospital; no site plan was prepared by the police on his instruction nor he signed on any of the documents of the police. Witness Noor Mohd. is not the complainant and FIR has been registered by one Abdul Gaffar. The name of said witness is also not reflected as eye-witness of the accident. Moreover, the testimony of PW-2 during cross examination itself shows that his statement is based on the hearsay. In nut shell, the testimony of PW-2 is not trustworthy. The complainant has not been examined or produced at all.

Ld. Counsel for respondents vehemently argued that the petitioners are not entitled for compensation as rash and negligent driving of respondent No. 2 is not proved at all and relied upon the judgements reported as The Oriental Insurance Company V/s Meena Variyal & Ors. Minu B. Mehta & Ors V/s Balkrishna Ramchandra Nayan & Ors. Surender Kumar Arora & Ors. V/s Dr. Manoj Bisla & Ors. & Oriental Insurance Company Ltd. vs Premlata Shukla & Ors. in support of contentions.

After perusal of the records and testimony of the witness, it appears that the negligence of the respondent No. 2 is not proved therefore the claim petition filed by petitioners U/s 166/140 MV Act for grant of compensation is treated as petition U/s 163 A MV for grant of compensation. Issue No. 1 is disposed off accordingly.”

2. The facts of the case are that the deceased was standing near the gate of institute of Ayush Medical Science, Bhagu Khada, Lucknow alongwith motorcycle bearing registration no. DL 53 AV 0584, at a distance of two meter away from the road; he was hit fatally by the offending vehicle bearing registration no. UP 32 CZ 5618, while it was being driven in a rash and negligent manner, it was coming from the wrong direction i.e. it was being driven on the wrong side of the road. He was rushed to a hospital

where he was declared brought dead. The said offending vehicle was registered with respondent no. 1. An FIR was registered in terms of the narration of the motor vehicular accident. After completion of investigation a Chargesheet was filed.

3. The learned counsel for respondents submits that the name of the eye-witness is not mentioned in the FIR or in the Chargesheet. Be that as it may, there is no denial of the fact that the name of the deceased is mentioned in the FIR and in the Chargesheet and the reason for his demise was the rash and negligent driving of the offending vehicle by its driver. Therefore in terms of the dicta of the dicta of the Supreme Court in *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.* (2009) 13 SCC 530, nothing more was required to be seen by the learned Tribunal. It has held:

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-à-vis the averments made in a claim petition.

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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 an accident caused by a

particular bus in a particular manner may not be possible to be done by the claimants. 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. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

4. The rash and negligent driving is the presumed premise and cause of death in terms of the above. Therefore as a logical corollary, compensation ought to be granted and paid to the claimant.
5. In view of the above, the impugned order is set aside. The case is remanded to the learned Tribunal for computation of compensation for which the parties shall appear before the learned MACT on 18.03.2020.
6. The learned Tribunal is requested to endeavour to dispose-off the case within a period of six months from the date when the case is next listed before it. The learned counsels for the parties assure the Court that they shall assist the learned Tribunal on every date and shall not seek any adjournment whatsoever.
7. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

FEBRUARY 18, 2020

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