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

Decided on: 24.01.2020.

+ **MAC.APP. 980/2017**
SHABINA @ SHAMINA & ORSAppellants
Through: Mr. S.N. Parashar, Advocate.

versus

SATVIR & ORSRespondents
Through: Mr. A.K. Soni, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 40626/2017 (for delay) & CM APPL. 40627/2017 (for delay in refiling)

1. These applications seek condonation of delay in filing and re-filing of the appeal.
2. For the reasons mentioned in the applications, the delay is condoned.
3. The applications stand disposed-off.

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4. This appeal impugns the judgment dated 01.05.2017 passed by the learned MACT in MAC Petition No. 130/15, which rejected the appellants' claim on the ground that rash and negligent driving of the alleged offending vehicle had not been proven, therefore, no claim would be maintainable under section 166 of the Motor Vehicles Act, 1988.
5. The Court would note that photocopy of the following documents have been placed on record:

"1. F.I.R. (running page 4)

2. *R/C of the offending vehicle*
3. *D/L of the offending vehicle's driver*
4. *Insurance Cover Note*
5. *Raseed Hawalgi Nash (Receipt of the handing over of the mortal remains of the deceased.)*
6. *Certificate in respect of residence as well as identification alongwith photographs issued by the Municipal Corporation President Baghpat, U.P.*
7. *Aadhar Card/receipt of the four petitioners."*

(page 123 of the LCR)

6. The learned Tribunal has recorded the facts as under:

"2. The facts are like this on 27.03.2015 at 4.30 pm at Hayatpur, Rampura Road, before IIIC Company, Sector 89, Gurugram, Haryana deceased went to sleep under the truck bearing no. HR- 55K-2483 after intimating the driver/ Satvir to wake him for proceeding towards destination. The driver did not wake up the deceased. The driver without blowing any horn ran over the truck over the body of the deceased due to which deceased was crushed and died on the spot. The accident has taken place due to rash and negligent driving of the driver. The brother of deceased informed others as well as to the police. The driver fled from the spot. The accident has taken place due to rash and negligent driving of driver of truck. FIR no. 229/15 PS, Sector 10, Gurugram, Haryana was registered against respondent no. 1."

7. The FIR records that the driver Satvir had started the offending vehicle without caring to wake up the sleeping person or alternatively,

without ascertaining whether there was anybody in, around or under it. The deceased was resting on the ground and it is because of the negligence of the driver of the offending vehicle that it ran over the deceased, crushed him and his life ended instantaneously. Insofar as the FIR has been registered; criminal case has been initiated against the driver of the offending vehicle and the vehicle was seized from the spot, the requirement of proving the preponderance of probability of the accident having been caused by rash and negligent driving of the offending vehicle has been established.

8. In *National Insurance Company Pvt. Ltd. vs. Smt. Pushpa Rana & Ors.*, (2008) 101 DRJ 645, this Court held *inter alia*:

“12. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgement of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Meena Variyal; 2007 (5) SCALE 269. On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of

evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver.”

9. The nature of the accident as recorded in the FIR and the statements of the claimants, etc., and the police documents prove that the accident occurred because of the negligence of the driver of the offending vehicle. This is a case of *res ipsa loquitur*. No further proof or evidence would be required to prove negligence. It stands established.

10. In the circumstances, the case is remanded to the learned Tribunal for computation of compensation as per evidence that may be led by the claimants.

11. For this purpose, the parties shall appear before the learned Tribunal on 07.02.2020. Since the case pertains to an accident which occurred in the year 2015 and more than half a decade has gone by, the learned Tribunal is requested to endeavour to dispose-off the case, preferably within a period of four months from the date when the case is next listed before it. The learned counsel for the parties submit that they would also endeavour to assist the learned Tribunal on every date when the case is next listed before it and shall not take any adjournment whatsoever. Let the LCR be returned to the learned Tribunal.

12. The appeal is disposed-off in terms of the above.

NAJMI WAZIRI, J

JANUARY 24, 2020

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