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

+ **MAC.APP. 116/2019**

MUNNI DEVI & ORS

.....Appellants

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

versus

BIJENDER & ORS (THE ORIENTAL INS CO LTD)

.....Respondents

Through: Mr. JPN Shahi, Advocate for
R-3/Insurance Company.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

23.10.2024

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1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as "MV Act, 1988"*) has been filed on behalf of the appellants against the Award dated 21.08.2018 passed in MACT No. 176/2018.
2. It is submitted that the Claimants had filed the Claim Petition under Section 166 of the Motor Vehicles Act, 1988 on 04.06.2018. The matter was listed for recording of evidence of the Claimants on 09.07.2018. However, on the said date, it was reported that the witness is not available at the given address. The learned Tribunal closed the evidence and granted compensation by converting the Claim Petition under Section 163A of MV Act, 1988.
3. By way of present Appeal, the enhancement of the compensation has been sought on the ground that the same may be granted under Section 166



of MV Act, 1988.

4. Learned counsel for the respondent No. 3-Insurance Company submits that in fact, when no negligence had been proved, it was the Court, benevolent to give the compensation by treating the Claim Petition under Section 163A of MV Act, 1988.

5. It is, therefore, submitted that the impugned Award dated 21.08.2018 does not suffer from any infirmity and the present Appeal is without merit which is liable to be dismissed.

6. **Submissions heard.**

7. The petitioners had filed the Claim Petition under Section 166 of MV Act, 1988. The FIR No. 284/2018 had been registered under Sections 279/304A of the Indian Penal Code, 1860 at Police Station New Usmanpur, Delhi and after the investigations, the Chargesheet was filed before the Court, wherein Sri Jasim Sekh had been cited as an eyewitness on whose statement the said FIR was registered.

8. Only because the said eyewitness was found unavailable on the given date, no further opportunity was given to the Claimants to secure the presence of the said eyewitness.

9. Even otherwise, the documents filed along with the Chargesheet sufficiently reflected that it was a case of negligence on the part of the offending vehicle. Therefore, the Tribunal was incorrect in closing the evidence on the first date and treating the Claim Petition under Section 163A of the MV Act, 1988.

10. It may be observed that while the expeditious decision on Claim Petition is warranted and expected, but it cannot be an undue haste which results in the miscarriage of justice if the eyewitness was not available on



one date and in the present case, it was the first date of recording of evidence when the eyewitness was not available. At least, some effort should have been made to get the eyewitness summoned through Investigating Officer or otherwise to secure his presence. Moreover, the documents annexed along with the Chargesheet could not have been outrightly overlooked and ignored.

11. In these circumstances, it is held that the impugned Award dated 21.08.2018 passed under Section 163A of MV Act, 1988 is not sustainable and the same is hereby set aside.

12. The case is remanded back to the Tribunal which shall give an opportunity to the Claimants to produce the witnesses/to lead evidence in regard to the negligence of the offending vehicle and decide the Claim Petition in accordance with law.

13. Needless to state that the opposite party i.e., the Insurance Company would have a right to participate and cross-examine the witnesses that may be produced on behalf of the Claimants and also to produce its witness, if it so desires.

14. The compensation amount which has been deposited on behalf of the respondent No. 3-Insurance Company shall be taken into consideration while deciding the Claim under Section 166 of the MV Act, 1988.

15. The parties are directed to appear before the learned Tribunal on 08.11.2024.

NEENA BANSAL KRISHNA, J

OCTOBER 23, 2024

S.Sharma