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

+ **MAC.APP. 55/2024**

SH TULSI PRASAD & ORS. Appellants

Through: **Mr. S.N. Parashar, Adv.**

versus

SH SANDEEP & ORS. Respondents

Through: **Mr. Yuvraj Sharma, Proxy
Counsel for Mr. Pankaj Seth,
Adv. for R-3/Insurance
Company**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **23.01.2024**

1. This hearing is being conducted through hybrid mode.

CM APPL. 4100/2024 (Ex.)

2. Allowed, subject to all just exceptions.

3. The application shall stand disposed of.

CM APPL. 4101/2024 (Delay of 04 days in filing the present appeal)

4. This application has been moved on behalf of the petitioner seeking condonation of delay of 04 days in filing the present appeal.

5. For the reasons stated in the application, the delay of 04 days in filing the present appeal is condoned.

6. The application stands disposed of.

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7. None appeared on behalf of respondents No. 1 and 2 despite advance notice.



8. Advance notice has been served upon respondent No.3/Insurance Company who is being represented through learned proxy counsel for the main counsel, Mr. Pankaj Seth, Advocate.

9. The appellants/claimants are challenging the impugned judgment-cum-award dated 19.09.2023 passed by the learned Presiding Officer, MACT, North-West, Rohini Courts, Delhi, whereby the claim petition instituted at the behest of the appellants seeking compensation for the death of their mother-Smt. Maha Devi involving offending vehicle i.e., bus bearing No. UP-17T-5919, has been dismissed.

10. Learned counsel for the appellants has submitted that the learned MACT was not impressed by the testimony of PW-1, Tulsi Prasad, who was an alleged eye-witness to the motor accident. The deceased was a pedestrian who was apparently hit by the offending vehicle driven by respondent No.1 and it was pointed out that he was apprehended at the spot of the incident. It is also pointed out that an FIR was lodged and a chargesheet has already been filed against respondent No.1.

11. On a careful reading of the impugned judgment-cum-award, this Court finds that the learned MACT has taken a hyper technical view of the matter and has failed to appreciate the real controversy in light of the well ordained law propounded by the Apex Court in the case **Anita Sharma v. NIAC** 2021 (1) SCC 171, as well as **National Insurance Company Ltd. v. Pushpa Rana**, MAC 561 of 2018 besides other such judgments.

12. Briefly put, it is well established in compensatory jurisprudence that there are certain situations wherein the claimants may face difficulty in proving the manner in which the accident occurred, and in



such appropriate cases, the Tribunal can invoke the principle of *res ipsa loquitor*, so as to shift the onus of proof upon the defendant i.e. driver of the offending vehicle.

13. In any case, even if the issue of rash and negligent driving was not proved, it was still open to the court to decide the quantum of compensation in terms of Section 163 A of the Motor Vehicles Act.

14. In view of the foregoing discussion, the present appeal is allowed. The impugned judgment-cum-award dated 19.09.2023 is hereby set aside with the direction to the learned Presiding Officer, MACT, to re-examine the entire gamut of the case and subsequent to rendering a fresh hearing to the parties, decide the matter afresh as per law. Nothing stated in this order shall tantamount to an expression of opinion on the merits of the case.

15. Copy of this order be sent to the learned Presiding Officer, MACT, for information and necessary compliance.

16. The claimants shall appear before the learned Presiding Officer, MACT on 01.03.2024.

DHARMESH SHARMA, J.

JANUARY 23, 2024

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