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

% *Date of decision: 24th October, 2024*

+ **MAC.APP. 801/2018**

SUMAN KUMARI & ORSAppellants

Through: Mr. Anshuman Bal, Advocate.

versus

NATIONAL INS CO LTD & ORSRespondents

Through: Mr. Pradeep Gaur, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 173 of the Motor Vehicles Act ("M.V. Act" *hereinafter*) has been filed against the judgment dated 16.07.2018 in MACT No.15144/2015 wherein the Claim filed on behalf of the appellants/claimants under Section 166 and 140 M.V. Act on account of death of Sh. Madan Singh @ Madan Lal in road accident on 28.09.2014, has been dismissed.

2. Briefly stated, on 28.09.2014 in the afternoon deceased Madan Singh @ Madan Lal was going on his scooter on Wazirabad Road towards Delhi. When he reached at Sahibabad Chowk, Shalimar Garden, U.P a crane bearing No.HR 47E 5076 (the offending vehicle) came from behind at a high speed being driven in a rash and negligent manner by its driver and hit the scooter of the deceased. Consequently, he fell and sustained grievous injuries. He was taken to Narender Mohan Hospital where he died during the



treatment. FIR No.1214/2014 under Section 279/338/304A IPC was registered. After completion of the investigations,Chargesheet was filed before the learned M.M. *The Claimants also filed the Petition under Section 166 and 140 M.V. Act for grant of compensation.*

3. The petition was *contested by the respondent Nos.1 & 2, the driver owner of the vehicle* who denied all the contentions raised in the petition including that the Crane was not the alleged offending vehicle.

4. *The Insurance Company* admitted that the offending vehicle was covered vide Policy valid for the period from 27.12.2013 to 26.12.2014.

5. The evidence was led on behalf of the Claimants. No evidence has been adduced on behalf of the Respondents.

6. The ***learned Tribunal*** disbelieved the testimony of PW-2, Sh. Vinod Kumar,the eye witness. It also observed that the Chargesheet though filed, had not been proved in accordance with law. It was held that there was no rashness and negligence proved on the part of the offending vehicle; consequently, ***the Claim Petition was dismissed.***

7. *Learned counsel on behalf of the Claimants* has argued that the Crane which was the offending vehicle, was left on the spot after the accident. There were also the documents which were part of the Chargesheet which had been placed on record, but has been erroneously not considered by the Tribunal. It is submitted that the negligence on the part of the offending vehicle stood proved and the finding of the learned Tribunal to the contrary, is liable to be set aside.

8. *Learned counsel on behalf of the Insurance* has argued that the *learned Tribunal* has rightly appreciated the testimony of the eye witness and has correctly arrived at the conclusion of no negligence being



established on the part of the offending vehicle. It is submitted that there is no ground for interference with the Order of the learned Tribunal.

9. Submissions Heard.

10. The occurrence of the accident on 28.09.2014 between the scooter of the deceased and the Crane, is not disputed. It is also proved from the FIR No.1214/2014 registered at P.S. Sahibabad Chowki, Shalimar Garden, U.P. that Crane was involved in the accident as it was seized and the Mechanical Inspection was got carried out. From the Mechanical Inspection Reports, the involvement of the two vehicles stands fully established.

11. Furthermore, the claimants had examined PW-2, Sh. Vinod Kumar to prove the negligence. PW-2 had deposed that at the time of accident, he was present at his shop and repairing a motorcycle and the spot of accident was visible from his shop. He saw the scooter being hit by the Crane from behind, resulting in fatal injuries to the deceased. The learned Tribunal erroneously disbelieved the testimony of this witness by over emphasizing on the insignificant aspects in the cross examination whereby the witness was unable to give the name of the son of the deceased on whose request he had appeared in the Court or the colour of the Crane.

12. Moreover, the manner in which the scooter was hit by the Crane clearly proves the negligence on the part of the Crane, which can be made out from the site plan itself. Also, the mechanical inspection reports of the two vehicles, also corroborate that the scooter of the deceased was hit by the Crane from behind. It is a case where the circumstances itself speak of the negligence. Moreover, there is no evidence brought on record either by the Insurance or by the Driver /Owner to show that there was any negligence whatsoever on the part of the deceased.



13. Pertinently, in the proceedings under Motor vehicle Act, while considering the aspect of negligence, neither a hyper-technical approach is mandated, nor a finding of rashness and negligence, has to be established beyond reasonable doubt, unlike criminal proceedings. The learned Tribunal, therefore, fell in error in concluding that there was no rashness or negligence established on the part of the offending vehicle.

14. The findings on this aspect are hereby, set aside and it is held that the accident occurred due to the rash and negligent driving of the Crane bearing No. HR 47E 5076 by its driver/Devender Singh, R-2.

15. The Impugned Award is hereby set aside. The parties are directed to appear before the learned Tribunal on 11.11.2024 at 10 AM and the learned Tribunal will proceed to decide the quantum of compensation.

16. The Appeal is accordingly, allowed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 24, 2024
RS