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**(2015) 02 DEL CK 0384**

**In the Delhi High Court**

**Case No : MAC App. No. 334 of 2013**

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Jitender Kumar and Others

RESPONDENT

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**Date of Decision : 24-02-2015**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 158(6), 166

**Citation : (2015) 2 ACC 521**

**Hon'ble Judges : G.P. Mittal, J**

**Bench : Single Bench**

**Advocate : A.K. Soni, for the Appellant**

**Final Decision : Allowed**

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## **Judgement**

G.P. Mittal, J.

1. The appeal is directed against the impugned judgment dated 4.1.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs. 3,83,348 was awarded for the death of Smt. Premwati, who died in a motor vehicular accident which occurred on 25.10.2010 at about 6.00 p.m. While dealing with the issue of negligence, the Claims Tribunal held as under:

"Issue No. 2

(ii) Whether petitioner prove that deceased suffered fatal road accident on 25.10.2010 involving scooter Honda Activa bearing registration No. DL-7SBF-9712 being driven allegedly in a rash and negligent manner by R1?

16. In order to determine the question of rash and negligent driving of offending vehicle bearing registration No. DL-7S-BF-3312 the testimony of P.W. 1 Jitender Kumar is very much relevant. He specifically deposed that on 25.10.2010 at about 6 p.m. mother of petitioner (deceased herein), was going on foot to her house situated at Khichri Pur and when she reached near 5 Block, in the

meantime a scooter make Honda Activa bearing registration No. DL-7S-BF-3312 which was being driven by its driver in a rash and negligent manner reached there and hit her. Due to forceful impact she fell down on the road and was immediately taken to Lal Bahadur Shastri Hospital. She was got medically examined vide MLC No. 11718/10. Later on she was shifted to Safdarjung hospital but during treatment she expired on 28.10.2010. Post-mortem was got conducted vide PM report No. 1010UKG165.

17. The testimony of P.W. 1 find support from the police report filed under Section 158(6) of MV Act. The report shows that case was registered vide FIR No. 346/10 and injured was got admitted in the hospital. The averments mentioned in the FIR corroborates the deposition of P.W. 1. This fact further corroborates with the MLC bearing No. 11718/10 of the deceased wherein it is mentioned that Premwati aged about 60 years female with alleged history of RTA was brought to hospital. The post-mortem of dead-body was got done. Postmortem report Ex. P.W. 1/3 clearly shows that the cause of death in this case is due to shock due to anti-mortem injury to head produced by blunt force impact.

18. During cross examination of P.W. 1 nothing has come on record to show that his version suffers from any infirmity, rather his testimony is further corroborated by documentary evidence thereby it is established that death of Premwati in the present case has taken place due to rash and negligent driving of the offending vehicle bearing No. DL-7SBF-3312 which was being driven by R1. Accordingly, I decide this issue in favour of petitioner and against the respondent."

2. It is true that in order to claim compensation in a petition under Section 166 of the Motor Vehicles Act, 1988 (the Act), a claimant is not required to prove negligence beyond shadow of all reasonable doubt. But at the same time, proof of negligence is sine qua non to succeed in a claim petition under Section 166 of the Act. Thus, negligence has to be established on the touchstone of preponderance of probability.

3. It is very unfortunate that the Claims Tribunal solely relied upon the testimony of the Petitioner who was the son of the deceased and was not an eye witness to the incident. The Claims Tribunal did not make any effort to summon the eye witness cited in the case or to analyse the circumstantial evidence to find out if at all there was any negligence on the part of the driver of the offending vehicle two wheeler make Honda Activa bearing No. DL-7S-BF-3312.

4. In view of this, finding of negligence cannot be sustained; the same is accordingly set aside.

5. The case is remanded back to the Claims Tribunal for examining the eye witness, I.O. of the case or any other relevant witness and then to decide the issue whether negligence has been proved on the test of preponderance of probability or not.

6. The Claims Tribunal shall record the evidence and endeavour to give its finding within a period of three months from the date of hearing fixed by the Court.
7. Parties are directed to appear before the Claims Tribunal on 9.3.2015.
8. TCR be transmitted to the Claims Tribunal through Special Messenger along with a copy of the order. List the appeal before the Court on 24.9.2015.