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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAC.APP. 567/2019, CM APPL. 23556/2019, CM APPL.**
23557/2019 & CM APPL. 23558/2019

SAIF ALI & ORS

..... Appellants

Through: **Mr. Javed Khan, Advocate.**

versus

RAMA DEVI

..... Respondent

Through: **Mr. Chandan Mishra and Mr. Akhilendra Kumar, Advocates alongwith Mr. Pradeep Singh, son of respondent.**

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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24.09.2019

In the previous order dated 25.07.2019, the submission of the appellant was recorded as under:

“It is the appellants’ case that the award of compensation against them is erroneous both in law and fact because it has not been established that his vehicle was involved in the accident. Indeed, as per the Mechanical Inspection Report, no fresh damages were found on the front side of the TSR and no blood stain was found on the front side of the body of the vehicle either. Furthermore, the injured was crossing not from the zebracrossing but from an unmarked portion in the middle of the road and he was injured in some other accident. As a good Samaritan, the appellant picked



him up from the site and took him to the hospital and remained there till the police came. He submits that the appellant has been singled out for his good deed.

It is also the appellants' case that their counsel did not cross-examine PI. Cross-examination had been closed on the ground that the main counsel for the appellant was not available and compromise talks could (shall) be done. Ms. Rama Devi (PI) was not cross-examined despite an opportunity being given to the appellants. It is the latter's case that their counsel had not carried out his professional duty diligently as was expected of him. Furthermore, he had no instructions apropos any compromise talks. Therefore his submission in this regard was without authority. It is contended that the counsel could have well sought the cross-examination to be deferred. However, he neither informed the appellants nor discharged his duty as entrusted to him.

It is the appellants' case that they had full faith in the counsel for representing their case fully and for defending their interests, but the counsel has been found wanting and put the appellants in a position where they have been asked to pay damages of Rs.3,61,720/- with interest.”

Today the learned counsel for the appellant submits that the deceased was perhaps a jaywalker who was hit by some other vehicle. The site plan shows that accident happened in the middle of the road and not at a zebra crossing. The said site plan, alongwith a copy of the DAR, has been accepted as the basis of proof of rash and negligent driving by the appellant.

In any case, the rash and negligent driving is not proven because the impact of the vehicle hitting against the body of the deceased would definitely have left some dent on the TSR but no such dent or not even a



scratch is found anywhere on the vehicle nor was its headlight or windscreen cracked or otherwise shattered.

It is the appellants' case that his vehicle was not involved in the accident and he, as a good Samaritan was only assisting the police officer to take the injured/victim to the local hospital. This police officer instead took him to the police station and implicated him. The learned counsel for the appellant contends that if the PCR driver was with him at the time, it means that the PCR itself was with the said deponent. That being the case, there would be no occasion for the deponent/police officer to make a call at Emergency telephone no. 100 for backup, and/or to seek any other assistance.

The learned counsel for the respondent submits that till the next date of hearing, no precipitate action shall be initiated against the appellant.

List on 06.11.2019.

NAJMI WAZIRI, J

SEPTEMBER 24, 2019

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