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% 05.03.2008

Present: Mr. Pankaj Seth, Adv. for the appellant.
Ms. Manu, Adv. for respondent-4/Caveator.

+ Caveat Pet. No. 35/2008

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Since Ms. Manu, Advocate for the caveator has put in appearance, Caveat petition stands disposed of.

CM No. 2289/2008

For the reasons stated in the application, the application is allowed. Delay in filing the present appeal is condoned.

The application stands disposed of.

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MAC APP No. 94/2008

Mr. Pankaj Seth, counsel appearing for the appellant states that defence under Section 170 of the Motor Vehicles Act was taken over by the insurance company and therefore, the present appeal filed by the insurance company is maintainable in the eyes of law.

The main grievance raised by the counsel for the appellant is that the Tribunal has wrongly taken into consideration the income of the deceased for the assessment year 2006-07 which was filed by the representative of the deceased after his death. Contention of learned counsel for the appellant is that with a view to claim more amount towards compensation, income for the said assessment year has been inflated willfully.

Ms. Manu, Advocate appears for the respondent and submits that there is no illegality in the impugned order and the Tribunal has rightly taken into account the income as disclosed for the assessment year 2006-07. Contention

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of counsel for the respondent is that income for the assessment year 2006-07 and the income preceding assessment year i.e., 2005-06 at Rs.3,50,172 have been taken into consideration and no fault can be found with the same.

I have heard counsel for the parties and have perused the record.

At the first blush, the argument of the learned counsel for the appellant looked attractive but after examining the assessment order produced by the respondent, the said argument of the counsel for the appellant cannot sustain. Perusal of the said assessment order shows that an amount of Rs.1,44,788/- was paid on behalf of the deceased towards TDS. Once such a large amount has been paid towards TDS, therefore, the argument of the counsel for the appellant that the income for the said assessment year was deliberately inflated just

to claim enhancement in the compensation amount does not hold water.

I, therefore, do not find any merit in the appeal and the same is hereby dismissed.

March 05, 2008

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KAILASH GAMBHIR, J