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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP.No.290/2004

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Date of decision: 1st September, 2009

KALLU BAI

..... Appellant

Through : Ms. Saahila Lamba, Adv.

versus

PARMOD YADAV & ORS.

..... Respondents

Through : Mr. M.F. Khan and
Mr. A.K. Bajpai, Advs.
for R – 3.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby her claim petition was dismissed by the learned Tribunal.

2. The accident dated 14th January, 1999 resulted in the death of Ramesh. The deceased was survived by his mother who filed the claim petition before the learned Tribunal. The deceased was aged 20 years at the time of the accident and was working as a Mason earning Rs.4,500/- per month. The deceased was traveling in a bus bearing No.DL-1P-2178 at the time of the accident. The said bus was over taking a tractor and the bus got struck against the load of grass on the tractor as a result of which

the deceased fell down from the bus and suffered fatal injuries.

3. The learned Tribunal dismissed the claim petition on the ground that there was no evidence to prove the accident between the tractor, deceased and bus No.DL-1P-2178. The learned Tribunal further held that the deceased himself substantially contributed to the said accident by keeping his half body out of the running bus. The learned Tribunal held that the appellant failed to prove that she was the mother and only legal heir of the deceased.

4. From the award of the learned Tribunal, it is clear that the learned Tribunal has not conducted any inquiry as contemplated under Section 168 and Section 169 of the Motor Vehicles Act. The findings of the learned Tribunal were also contradictory. In para-18 of the award, the learned Tribunal held that the deceased was contributory negligent in keeping his half body out of the running bus but in para-20 of the award, the learned Tribunal held that there was no evidence to prove the accident. If there was no evidence to prove the accident, there was no occasion for contributory negligence of the deceased. If the learned Tribunal had any doubt about the relationship of the appellant with the deceased, the learned Tribunal ought to have conducted an inquiry to verify the said facts.

5. For all the aforesaid reasons, the award of the learned Tribunal is liable to be set aside.

6. The appeal is allowed and the impugned award is set aside. The claim petition is remanded back to the learned Tribunal for

appropriate inquiry under Section 168 and Section 169 and Delhi Motor Accident Claim Tribunals Rules, 2008.

7. The parties are directed to appear before the learned Tribunal on 14th September, 2009.

8. The LCR be returned back immediately to the learned Tribunal.

9. This case relates to the accident dated 14th January, 1999. The learned Tribunal shall, therefore, expedite the claim petition and dispose of the same preferably within a period of six months.

10. Copy of this order be given 'Dasti' to learned counsel for both the parties under the signature of Court Master.

SEPTEMBER 01, 2009
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J.R. MIDHA, J