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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP.No.243/2009

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Date of decision: 12th November, 2009

NEW INDIA ASSURANCE CO. LTD. Appellant
Through : Mr. Pankaj Seth, Adv.

versus

AMRITA DEVI AND ORS. Respondents
Through : Mr. J.K. Singh, Adv.
for R-1 to 3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.7,10,460/- has been awarded to the appellant.
2. The accident dated 19th November, 2003 resulted in the death of Girish Kumar. The deceased was survived by his widow, minor son and father who filed the claim petition before the learned Tribunal.

3. The deceased was traveling on a cycle rickshaw which was hit by the offending truck bearing No.HR-38B-1770. The intensity of the hit was so high that the deceased was thrown away from rickshaw on the road and he suffered fatal injuries. The deceased was aged 34 years at the time of the accident and was working as Mason (Raj Mistri) and had also some income from the grocery shop and agricultural income. However, in the absence of any documentary evidence to prove the income of the deceased, the learned Tribunal took the minimum wages of Rs.3,115/- per month, added 50% towards the increase due to inflation and rise in price index, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.6,35,460/-. Rs.50,000/- has been awarded towards loss of love and affection and Rs.25,000/- towards funeral expenses. The total compensation awarded to the appellant is Rs.7,10,460/-.

4. The appellant has challenged the negligence of the driver of the offending vehicle and the quantum of compensation awarded to claimants/respondents No.1 to 3.

5. The appellant has not taken the permission under Section 170 of the Motor Vehicles Act and, therefore, cannot challenge the award of the learned Tribunal. With respect to the negligence and quantum of compensation, it is well settled that in the absence of having taken over the defence under Section 170 of the Motor Vehicles Act, the Insurance Company cannot challenge the award on any ground except those mentioned in

Section 149(2) of the Motor Vehicles Act. Reference in this regard be made to the judgment of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs. Nicolledda Rohtagi, (2002) 7 SCC 456** and **Shankarayya vs. United India Insurance Co. Ltd., (1998) 3 SCC 140** where it has been held that in the absence of defence as envisaged under Section 170 of the Motor Vehicles Act being taken over by the insurance company, the appeal filed by the insurance company is not maintainable.

6. Notwithstanding the bar of Section 170 of the Motor Vehicles Act, the appellant has no case on merits. This is a case of *res ipsa loquitur* where the deceased was hit by the offending truck and he fell down from the rickshaw and suffered fatal injuries. The loss of dependency of the deceased has been computed according to the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**. The learned Tribunal has not awarded any compensation for loss of consortium and loss of estate. However, the amount awarded for loss of love and affection and funeral expenses is on a higher side and is treated to include the compensation for loss of estate and loss of consortium.

7. For all the aforesaid reasons, the appeal is dismissed.

8. The appellant has deposited the entire award amount with the learned Tribunal which has been released to claimants/respondents No.1 to 3. In that view of the matter, the

statutory amount of Rs.25,000/- be refunded to the appellant through counsel.

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

NOVEMBER 12, 2009
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J.R. MIDHA, J