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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) No.659/2008

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Date of decision: 7th October, 2009

NATIONAL INSURANCE CO.LTD. Petitioner
Through : Mr. Pradeep Gaur and
Mr. Amit Kumar Pandey, Advs.

versus

MUMTAZ & ORS Respondents
Through : Mr. Sanjib Dutta and
Mr. Naseem Akhtar, Advs.
for R – 1 and 2.

**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? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

JUDGMENT (Oral)

1. The petitioner has challenged the order dated 8th April, 2008 passed by the learned Tribunal whereby the learned Tribunal has dismissed the petitioner's application under Section 170 of the Motor Vehicles Act.

2. The accident dated 2nd August, 2006 resulted in the death of Rizwanullah. The deceased was survived by his parents who filed the claim petition before the learned Tribunal against the driver, owner and Insurance Company of the offending vehicle.

3. The driver and owner of the offending vehicle were duly served but did not appear before the learned Tribunal and were proceeded ex-parte.

4. The petitioner filed an application before the learned Tribunal under Section 170 of the Motor Vehicles Act on the ground that the driver and owner were not contesting the petition and have been proceeded ex-parte. It was further contended that there appears to be collusion between the owner and the driver of the offending vehicle.

5. The learned counsel for claimants/respondents No.1 and 2 submit that without prejudice and without admitting the allegation of collusion made by the petitioner in the application before the learned Tribunal, the claimants/respondents No.1 and 2 do not oppose the petition.

6. In the facts and circumstances of this case and noting that the driver and owner of the offending vehicle are not contesting the claim petition before the learned Tribunal and further that the claimants/respondents do not oppose the petition, the petition is allowed and the impugned order dated 8th April, 2008 is set aside.

7. The petitioner's application under Section 170 of the Motor Vehicles Act is allowed and the petitioner is permitted to take over the defence of owner and driver of the offending vehicle to contest the claim petition before the learned Tribunal in accordance with law.

8. The LCR be sent back forthwith.
9. The parties are directed to appear before the learned Tribunal on 27th October, 2009.
10. Copy of this order be given 'Dasti' to learned counsel for both the parties under signatures of Court Master.

OCTOBER 07, 2009
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J.R. MIDHA, J