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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on:28th January, 2015

\+ **MAC.APP. 983/2011**

SANTOSH & ORS ..... Appellants

Through: Mr. S.N. Parashar, Advocate.

versus

SEA HAWK TOUR & TRAVELS PVT LTD & ORS ..... Respondents

Through: Ms. Shantha Devi Raman, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. ***(ORAL)***

1. The Appellant impugns judgment dated 11.5.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the claims petition under Section 163A of the Motor Vehicles Act, 1988 preferred by the Appellants was dismissed relying on the judgment in *Ningamma & Another vs. United India Insurance Company, (2009) 13 SCC 710.*

2. It is admitted by the learned counsel for the parties that the risk of the driver was covered under the insurance policy and a sum of Rs.25/- in addition to the usual premium was paid towards the risk of the driver. It may be mentioned that during the pendency of this appeal, the Appellants examined Sh.Pawan Kumar Aggarwal, an employee working in Employees Provident Fund Organisation, who

proved that deceased Jaiveer was working in Sea Hawk Tour and Travels Pvt. Ltd. and contribution to the provident fund was being received from the employers. Thus, it is agreed by the learned counsel for the parties that the Appellants would be entitled to compensation under the Workmen Compensation Act, 1923. (see *Tata AIG General Insurance Co. Ltd., v. UP Roadways & Others,* Mac Appl. No.81/2007 decided on 16.03.2012.

3. On computation, the compensation for the death of a workman, taking the salary of the deceased to be Rs.4000/- per month on the date of the accident would come to Rs.4,15,960/- (207.98 x 4000 x ½). In addition, the Appellants claim a sum of Rs.1,73,372/- towards the cost of treatment. The bills with regard to the same have been placed on record. The learned counsel for the Respondent Insurance Company, however, submits that the bill for Rs.1,60,715/- should not be considered as it is a duplicate bill. It is urged that the claimants might have obtained reimbursement from other sources. It may be mentioned that the bill Ex. PW2/2, which was duly proved, is a computer generated bill. No suggestion was given to PW-2 that its reimbursement was obtained from any quarter. In view of this the Appellants would be entitled to Rs.1,73,372/- towards expenditure on treatment of deceased Jaiveer.

4. The overall compensation of Rs.4,15,960/- + Rs.1,73,372 = Rs.5,89,332/- is hence, awarded in favour of the Appellants which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

5. Respondent no.2 is directed to deposit the compensation amount

with the Claims Tribunal within four weeks failing which the Appellants would be entitled to interest @ 12% per annum from the date of this judgment.

6. Out of the awarded amount, 50% of the compensation shall be payable to the Appellant no.1, 10% each to Appellants no. 2 to 4 and 20% to Appellant no.5. Further, 50% of the amount awarded to the Appellant no.1 shall be kept in Fixed Deposit for a period of two years, four years and six years in equal proportion. The rest of the amount shall be released on deposit. The amounts awarded to Appellants no. 2 and 3 shall be held in fixed deposit for a period till they attain the age of majority and shall be released to them on attaining the age of 18 years. 50% of the amount awarded to the Appellant no.4 shall be held in Fixed Deposit for a period of one year. Rest shall be released to them on deposit.

7. The appeal stands disposed of.

8. Pending application, if any, also stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 28th, 2015
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