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

Date of Decision: 17th March, 2016

+ **MAC.APP. 148/2011**

SHALINI & ORS

..... Appellant

Through Mr. H S Gautam, Adv.

versus

VIJAY JINDAL & ORS

..... Respondent

Through Mr. A K Soni, Adv. for insurance

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mohit Kumar suffered injuries in a motor vehicular accident that occurred at about 6.20 AM on 31.07.2003 when scooter No.DL 5S B9654 (the scooter) on which he was riding pillion with his brother Lokesh Kumar was involved in an accident with motor vehicle described as DL 5C K0077 (the offending vehicle) admittedly insured against third party risk with the third respondent (insurer) for the period in question. He filed a claim petition before the motor accident claims tribunal (tribunal) seeking compensation for injuries suffered by him under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), which was registered as suit No.604/2004, impleading the driver and owner of the offending vehicle in addition to the insurer. On 19.03.2005, while inquiry was midway, he died. On the application of his widow and two minor children under Order 6 Rule

17 of the Code of Civil Procedure, 1908 (CPC), along with another application under Order 22 CPC, he was substituted by the said dependent family members, who also brought in amendments to plead that the death had occurred on account of injuries suffered in the accident, thus converting it into a case for compensation arising out of death.

2. It appears Lokesh Kumar, brother of the deceased Mohit Kumar, who was the driver of the scooter at the time of the accident had also suffered injuries. He had also similarly preferred a claim petition for compensation which had been registered as suit No.598/2004. Both the claim petitions were clubbed for purposes of inquiry. The tribunal decided the said two petitions by common judgment dated 04.09.2010 awarding compensation in the sum of ₹1,15,000/- with interest in favour of the legal heirs of Mohit Kumar (since deceased), declining to treat the claim as one arising out of death, holding, *inter alia*, that the death could not be related to the injuries suffered in the accident for the reason there have been no post-mortem examination of the dead body.

3. The substituted claimants (legal heirs of Mohit Kumar) have come in appeal raising grievance that the compensation awarded is inadequate. It has been submitted at the hearing on the appeal that evidence was led in the form of medical records to show the connection between the death and the injuries suffered in the accident. But the same was not considered. The learned counsel for the appellants at the same time fairly agreed that the clinical notes which were submitted as proof could not have been proved by the widow. In this view, the learned counsel for the appellant submitted that the matter may be remitted to the tribunal so that the claimants can adduce

proper proof of connection between death and the injuries in the accident. The claimants propose to bring in medical opinion and hospital records in support.

4. The learned counsel for the insurer on being asked submitted that he has nothing to say on this subject except that the compensation awarded by the tribunal in the impugned judgment has already been paid and would need to be suitably accounted for.

5. In above fact-situation, the appeal is allowed. The impugned judgment is set aside. The claim case is remitted for further inquiry to the tribunal wherein the claimants shall be entitled to lead further evidence in the nature mentioned above. Needless to add, the respondents who appear contest would be entitled to cross-examine the additional witnesses and also lead evidence in rebuttal, if any. The tribunal shall pass a fresh judgment, not feeling bound by the opinion expressed or the view taken on the claim petition in question in the impugned judgment.

6. It is made clear that the amount already paid shall be liable to be adjusted against the award that would eventually be passed.

7. The parties are directed to appear before the tribunal on 28.04.2016.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 17, 2016/VLD