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

\+ MAC.APP. 111/2016

M/S IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through Ms. Shantha Devi Raman, Adv.

versus

PUSHPA DEVI & ORS

..... Respondent

Through None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% **03.02.2016**

CM No.3750/2016 (exemption)

Exemption allowed, subject to just exceptions.

MAC.APP. 111/2016

Heard.

The insurance company is aggrieved against the award passed on 13.01.2015 by the Motor Accident Claims Tribunal in motor accident claims case registered as MACT No.245/09/08 on petition presented by the first to fourth respondents on the ground that the future prospects has been added while calculating the loss of dependency on account of death of Mahipal Singh Chaudhary, who died in motor vehicular accident that occurred on 10.15 PM on 02.11.2006. The learned counsel drew the attention of the Court to the discussion against issue No.3 in the impugned judgment. It is noted that the claimants had examined Mr. N A Subrahamanyam (PW-2) Accounts Officer of Presentation Convent Senior Secondary School to prove that the deceased was working as security guard and was in receipt of salary to the extent of ₹7,202/- at the time of his death. The evidence clearly brought out that the deceased was engaged as a security guard in the said school since November, 2002. In this view of the evidence adduced, which was not refuted, it cannot be said that the deceased was not in permanent employ of the school or was working at a fixed salary. In these circumstances, there is no reason why the benefit of future prospects of increase could not have been factored in. The grievance of the insurance company is improper.

The learned counsel for the appellant then submitted that though recovery rights have been granted to the insurance company against the insured (the fifth respondent herein) on the basis of finding that the driving license presented was fake, in the facts and circumstances noted in para 8 of the impugned judgment, the insurance company should have been totally exonerated for the reason that the insured and his driver had set up a defence on the basis of forged documents. In the considered opinion of this Court, the view taken by the Tribunal in directing the insurance company to pay to the claimants and then recover from the insured is in line with the law laid down by the Supreme Court in the case of *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297. The appeal is devoid of substance and is dismissed in *limine* with application.

Statutory deposit, if made, shall be refunded.

R.K.GAUBA, J

FEBRUARY 03, 2016
VLD