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

% **Date of Decision: 22nd December, 2016**

+ **MAC.APP. 131/2008**

THE NEW INDIA ASSURNACE CO. LTD..... Appellant

Through: Mr. Ramesh Kumar, Adv.

versus

SMAR JAHAN & ORS.

..... Respondents

**Through: Mr. Anshuman Bal, Adv. for
R1 to R7.**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby the Claims Tribunal has awarded Rs.4,88,800/- to respondents No.1 to 6.

2. The accident dated 04th February, 2007 resulted in the death of Intazar @ Naneh. The deceased was aged 33 years at the time of the accident and was survived by his widow, three minor children and parents who filed the claim petition before the Claims Tribunal. The Claims Tribunal took the monthly income of the deceased as Rs.3300/-, deducted 1/3rd towards his personal expenses and applied the multiplier of 17 to compute the loss of dependency as Rs.4,48,800/-. The Claims Tribunal awarded Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards transportation expenses of

dead body. The total compensation awarded is Rs.4,88,800/-.

3. Learned counsel for the appellant urged at the time of hearing that the appellant's liability is limited to the liability under the Employee's Compensation Act. It is submitted that the appellant's liability under the Employee's Compensation Act would be Rs.3,35,329/-.

4. Learned counsel for the respondent disputes the appellant's submission that the liability of the appellant is limited to the liability under the Employee's Compensation Act. It is submitted that this plea was not raised by the appellant before the Claims Tribunal. Without prejudice, it is submitted that even under Employee's Compensation Act, the compensation payable would be Rs.4,05,820/- along with interest @ 12% per annum as per computation given hereunder:

Calculation as per Employee's Compensation Act

Income of the deceased	Rs. 4,000.00
Factor	Rs. 201.66
Total compensation: Rs.201.66 x 2000	Rs.4,03,320.00
Funeral expenses	<u>Rs. 2,500.00</u>
Total compensation	<u>Rs.4,05,820.00</u> along with interest @ 12% per annum.

5. The record of the Claims Tribunal has been perused. In the written statement filed by the appellant, the appellant had admitted the valid insurance policy in respect of the offending vehicle but no plea of limited liability was raised in the written statement. No evidence was also led by the appellant before the Claims Tribunal. The

appellant did not even prove the clause relating to the limited liability of the appellant before the Claims Tribunal. In the absence of any pleadings or evidence, the Claims Tribunal has not given any finding with respect to the plea of limited liability raised in appeal before this Court. In that view of the matter, there is no infirmity in the award passed by the Claims Tribunal.

6. There is no merit in the appeal which is hereby dismissed.

7. The appellant has deposited the entire award amount with the Claims Tribunal out of which some amount has been released to respondents in terms of the award and the balance amount is lying in four FDRs. The Claims Tribunal shall release the FDRs to the respondents.

8. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

DECEMBER 22, 2016
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