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

Date of Decision: 06.05.2016

+ **MAC.APP. 174/2013**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: None

versus

DEVESHWARI & ANR. Respondents

Through: Mr. M.K. Sinha, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dhirender Singh, a bachelor, aged 27 years, employed as steward in Radisson Hotel, Paschim Vihar, New Delhi was riding on the motorcycle bearing registration no.DL-3S-BP- 7732 (motorcycle), at about 0145 hours on 12.05.2012 when there was a collision involving his vehicle with Tata Tempo bearing registration no.RJ-14-GA 6308 (Tata Tempo) at Bikaji Cama Place flyover resulting in he suffering injuries and dying in the consequence. His widowed mother (first respondent) instituted an accident claim case on 03.08.2012 on the basis of the Accident Information Report (AIR), which had been submitted by the Station House Officer of the police station R.K. Puram with reference to the first information report (FIR)

registered as FIR no.101/12 under Sections 279 and 304A of the Indian Penal Code, 1860 (IPC) respecting the said occurrence.

2. In the proceedings thus taken out before the Motor Accident Claims Tribunal (Tribunal), the second respondent and the appellant insurance company (insurer) were impleaded as party respondents on the averments that the former was the driver-cum-owner of Tata Tempo and the vehicle was insured against third party risk with the latter.

3. The tribunal held inquiry and, by judgment dated 30.11.2012, returned a finding that the accident had occurred on account of the negligent driving of the Tata Tempo. It awarded compensation in the sum of ₹5,67,976/- and directed the insurance company to pay the same within the period specified.

4. The insurer by the appeal at hand questions the judgment of the tribunal questioning the findings on the issue of negligence and also the computation of loss of dependency stating that the element of future prospects of increase to the extent of 30% over and above the salary and allowances received from the aforementioned employer was improper.

5. Having heard both sides and perused the record, this courts finds both the contentions unmerited.

6. Whilst it is true that in the case at hand, there is no eye witness account to the occurrence but it has to be borne in mind that the accident took place in the wee hours of 12.05.2012 when there would hardly be any public person moving around on the public road so as to be in a position to see the sequence of events or to come forward to narrate the same before the tribunal or before other adjudicatory forums. The AIR submitted by the police clearly shows that when the local police official arrived at the scene

they found both the aforementioned vehicles in accidental state with the driver of the Tata Tempo having absconded from the place. Noticeably, even during inquiry before the Tribunal, the driver-cum-owner of Tata Tempo did not come forward to offer his version. Against this backdrop, the principle of *res ipsa loquitur* applies. The facts and circumstances clearly point to the accident having occurred due to fault on the part of the driver-cum-owner of the Tata Tempo and, therefore, the finding to this effect cannot be faulted.

7. Having regard to the terms of engagement of the deceased with the above named hotel, as proved with the help of the appointment letter, it is clear that progressive rise in the income over the period was inherent in the service conditions of the said employment and, therefore, the addition of future prospects cannot be grudged.

8. The appeal is, therefore, dismissed. The entire amount of compensation with interest already stands deposited with the UCO Bank, Delhi High Court Branch, New Delhi, from which 60% was allowed to be released in terms of order dated 22.02.2013, the rest retained in fixed deposit receipt which also shall now be released to the claimant in terms of the impugned judgment.

9. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

MAY 06, 2016
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