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

**Date of Decision: 27.05.2016**

+ **MAC.APP. 479/2012 & CM No. 8052/2012**

**SUMATI CHAMOLI & ORS.**

**..... Appellants**

Through : **Mr. Shashi Shanker, Adv.**

**Versus**

**SHOBHA KUMAR& ORS.**

**..... Respondents**

Through: **Mr. Shadab Khan for Ms. Garima Prashad, Adv. for R-3 & 4.**  
**Mr. Shoumik Mazumdar, Adv. for R-5.**

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. This appeal challenges the order dated 16.09.2011 passed by the motor accident claims tribunal (tribunal) on the file of accident claim case (Suit No. 330/2011) which had been instituted by the appellant on 21.4.2011 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on account of death of her husband Asha Ram Chamoli in a motor vehicular accident that had occurred on 16.11.2002.

2. It is necessary to capture the basic background facts in the claim petition. Six parties were impleaded as respondents, including Shobha Kumar and Noor Alam, described as owner and driver respectively of truck

bearing registration No. UTG 815, with United India Insurance Company Ltd. stated to be its insurer, UP State Road Transport Corporation and Harinder Singh, admittedly the owner and driver of bus bearing registration No. UP 10C 2295 and Bharat Earth Movers Ltd., employer of the deceased.

3. During the pendency of the matter, for inquiry before the tribunal on 23.04.2005, R.S. Katoch, Personnel Officer of Bharat Earth Movers Ltd. (sixth respondent) appeared and made a statement to the effect that the deceased was working as a junior serviceman and that his widow, appellant (claimant) had already been paid “all the dues” pertaining to Asha Ram Chamoli and nothing was due from their side. Noticeably, in the said statement (page 63 of the tribunal’s record), no amount or the head under which the same may have been paid, was indicated or specified. Yet, in the corresponding order sheet of 23.04.2005, the tribunal mentioned that as per the statement of R.S. Katoch, Personnel Officer, amount of Rs. 3,94,120/- with interest of Rs. 30,698/- had been paid under the Workmen’s Compensation Act. The tribunal noted that none had appeared from the side of the petitioner and proceeded to record that the position explained by the said official of the employer appeared to be correct. It proceeded to dismiss the petition “accordingly”.

4. Close on the heels of the dismissal of the petition, the claimant moved an application for restoration, the same being entertained and by order dated 24.10.2005, notices issued to the respondents. On 30.04.2010, the tribunal noted in the proceedings that allegations about negligence of the truck had been pleaded as the cause of action to seek compensation and in the facts brought out by the averments, the owner and driver of the bus also being “victims of the accident”, they were not necessary parties. The tribunal also

observed that Bharat Earth Movers Ltd., the employer of the deceased (shown in the array as sixth respondent) was not a necessary party and, thus, the above said three respondents were discharged.

5. While the above said application for restoration was still pending, prayer under Section 140 of Motor Vehicles Act, 1988 (MV Act) was pressed and, by order dated 05.05.2010, the tribunal directed the insurer of the truck (fifth respondent) to pay ₹ 50,000/- to the claimant with interest @ 7 % per annum from the date of filing of the petition till realization.

6. The application for restoration was finally considered by the tribunal on 16.09.2011. Referring to the order dated 23.04.2005 whereby the petition had been dismissed on account of submissions made respecting the payment already made under Workmen's Compensation Act, the tribunal held the restoration application to be "not maintainable" and thus dismissed it.

7. The present appeal was filed challenging the dismissal of the restoration application by order dated 16.09.2011.

8. The counsel who was representing the claimants before the tribunal is the counsel who has preferred the present appeal. It is indeed a said commentary on the state of affairs that the counsel forgot that no allegations had been made against third, fourth and sixth respondents and further that they had already been struck off from the array of parties. Yet, he included them in the array of parties in the appeal leading to notices being issued even to them. The fact that all the said three respondents having been deleted from the array by order dated 30.04.2010 was brought out on the basis of submissions made by the counsel representing UP State Road Transport Corporation. When confronted with the record of the tribunal,

the counsel for the appellant now concedes that the third, fourth and sixth respondents should not have been included in the array. This, undoubtedly, has only added further to the delay and misery of the claimants.

9. Coming back to the basic ground on which the claim petition was initially dismissed by the tribunal on 23.04.2005, followed by dismissal of the restoration application on 16.09.2011, this Court finds it deeply disturbing to note the manner in which the tribunal short-shrifted the issue and jumped to conclusions without properly inquiring into the facts. The absence of the petitioner and her counsel and lack of proper assistance also added to the reasons in the erroneous impressions being gathered by the tribunal.

10. It is now pointed out by the claimants that by letter dated 1<sup>7th</sup> January, 2003 (copy at page 31 of the paper book), the employer had advised her to avail services of an advocate of her choice and institute legal proceedings before the appropriate forum for realization of the compensation under the Motor Vehicles Act. It is submitted by their counsel that though the amount mentioned in the proceedings recorded by the tribunal on 23.04.2005 were received, it is their claim that the same was not by way of compensation under the Employees' Compensation Act, 1923 as has come to be projected.

11. Be that as it may, it was improper on the part of the tribunal to assume the submissions made orally to be the factual position. Proper inquiry should have been made by insisting on the documents to be shown to the forum. Even otherwise, it is highly questionable as to how the payment of compensation by the employer could have resulted in closure of the case brought under Section 166 of Motor Vehicles Act, 1988 respecting negligent driving of a vehicle with which the employer had no connection.

12. For the foregoing reasons, the appeal is allowed. The claim petition dismissed on 23.04.2005 is restored on the file of the tribunal. It is directed to proceed further with inquiry in accordance with law. Needless to add the third, fourth and sixth respondents shown in the array in the claim petition, having already been deleted, need not appear. The claim case shall proceed before the tribunal against the rest of the respondents they including the driver on account of whose negligent driving of truck, death is stated to have occurred, besides the owner and insurer of the said vehicle.

13. Given the old pendency of the matter and the utter neglect shown by the counsel for the claimants and also the callous manner in which the tribunal proceeded with it, it is directed that the tribunal shall proceed with the case on day to day basis and decide it expeditiously, not later than three months from the date of first appearance. The parties as aforesaid shall appear before the tribunal on 7<sup>th</sup> July, 2016.

14. It is hoped that the counsel for the claimants in whom the claimants have placed trust, will now live up to the duties he is expected to discharge.

**(R.K. GAUBA)**  
**JUDGE**

**MAY 27, 2016**  
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