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

Date of Decision: 26th February, 2016

+ **MAC.APP. 294/2011**

MEERA VERMA & ORS

..... Appellant

Through Mr. Nitin Yadav, Adv.

versus

ORIENTAL INSURANCE CO LTD & ORS

..... Respondent

Through Mr. R C Mahjan, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Yogender Verma suffered injuries at about 4.30 PM on 07.02.2005 within the jurisdiction of police station, Preet Vihar, Delhi and died as a result thereof. He was engaged as a labourer tasked with the duty of unloading plywood cargo from truck bearing No.HR 47 2491 (the truck) with certain other labourers. The local police registered first information report (FIR) No.29/2005 on 11.02.2005 on the basis of statement of his widow Meera. Meera, joining her children Himansu (son) and Neha (daughter), filed a claim petition before Motor Accident Claims Tribunal (the Tribunal) on 05.12.2006 invoking special provision as to payment of compensation on structured formula on no fault liability principle contained in Section 163A of Motor Vehicles Act, 1988 (MV Act), impleading

Jaswant Singh and Ashwani Kumar (the driver and owner respectively of the truck) and Oriental Insurance Company Ltd. (admittedly the insurer against third party risk) as party respondents. The Tribunal held inquiry during which Meera examined herself as PW1 on the strength of her own affidavit Ex.P1, also relying on the documents relating to the report under Section 173 of Code of Civil Procedure, 1973 (Cr.P.C.) pertaining to the FIR 129/2005.

2. The Tribunal rejected the claim of Meera and her children noting that she herself was not an eye-witness and a document, referred to as mark 'A', showed that the deceased himself was responsible for the accident as he himself had fallen out from the truck. On the basis of this finding the claim petition was dismissed by judgment dated 18.12.2010 which is impugned through the appeal at hand.

3. This Court, upon hearing the parties and having perused the record, is left deeply disturbed. The tribunal while dismissing the claim petition failed to bear in mind that it was dealing with a claim petition brought under Section 163A of MV Act where the claimants were not required to plead, or establish, that the death had occurred due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person. On perusal of the record of the Tribunal it is noted that there are two documents which have been labelled as "mark A", one at page 141 and the other at page 155 of the Tribunal's record. The latter bears the date 07.02.2005. It purports to be a statement made by the deceased, in the presence of his wife (Meera) to the effect that the mishap had occurred since the deceased had been hurt while unloading the cargo from the truck. The

statement purported to declare that no one was to be blamed for this accident.

4. It, however, needs to be noted that it has not been shown by any endorsement on the abovesaid document as to in the course of which probe it was prepared. Noticeably, the police did not register any FIR on 07.02.2005. This was done on 11.02.2005 on the statement of Meera, the said document (FIR) (also mark A) showing that Meera had informed the investigating officer that the mishap had occurred since the driver of the truck had started the vehicle suddenly even while the deceased was in the process of unloading the cargo making him lose balance, falling down and suffering injuries which proved fatal.

5. Since the document labelled as mark 'A' dated 07.02.2005 is not shown to have been prepared during any formal proceedings under the law, inasmuch as there was no case registered with the police at that stage, it is questionable as to how it could have been used by the tribunal to doubt the veracity of Meera on her affidavit.

6. Whilst the basis error committed by the Tribunal is in searching for evidence showing fault on the part of the truck driver which was not necessary in a case where Section 163A of MV Act had been invoked the approach of the Tribunal was even otherwise, misdirected for the reason Meera may not have been an eye-witness but she had lodged the FIR on the basis of what turns out to be dying declaration of her husband made to her. The Tribunal, instead of accepting the said version based on the copy of the FIR which was also on record, gave primacy to the document dated 07.02.2005 which had not been affirmed or proved by any witness before it.

7. For the foregoing reasons, the impugned judgment cannot be sustained. It is set aside. In the given facts and circumstances, it is held that the claimants are entitled to compensation in terms of Section 163A of MV Act from the driver, owner and insurer of the aforementioned truck. Since the Tribunal did not hold any inquiry nor made any comment on this subject, the matter concerning the assessment of the compensation, and its award, is remitted to it.

8. The parties are directed to appear before the tribunal for further proceedings in accordance of law in the light of above observations/directions on 17.03.2016.

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 26, 2016
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