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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30th March, 2016

+ **MAC.APP. 390/2012**

NEW INDIA ASSURANCE CO LTD Appellant
Through Mr. Shoumik Mazumdar, Adv.

versus

SMT JAYANTI RAWAT & ORS Respondent
Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 07.02.2012 the motor accident claims tribunal (tribunal) decided accident claim case (MACT suit No.227/2008) instituted on 27.05.2008 by the first and second respondents herein (the claimants) for compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on account of death of their minor child Ankit as a result of collision between motor vehicle described as dumper bearing registration No. UP 22T -0497 (dumper) and Maruti car bearing registration No.UP 25M 9821 (car). The tribunal held inquiry and on that basis returned a finding that death had occurred due to negligence on the part of the driver of the dumper, thus, fastening liability on its owner to pay compensation and calling upon the appellant (insurer of the dumper) to indemnify.

2. The insurer has come up in appeal questioning the correctness of the finding recorded as above on the issue of negligence stating that since the

dumper was stationary on the road, the car having hit it from rear side, the negligence was on the part of the driver of the car rather than of the dumper.

3. Having heard the learned counsel for the appellant and gone through the record, this Court finds no substance in the appeal. The evidence of Gulam Mainuddin (PW2), an eye witness to the occurrence, also a motorist on way driving his own vehicle clearly proved that the dumper was stationary in the middle of the road with no caution sign or lights functional. Noticeably, the driver of the dumper was not produced in evidence to show facts contrary to what was deposed by PW2. The accident occurred around midnight (night intervening 18 and 19.11.2007) in remote area of District Udham Singh Nagar, Uttarakhand. In these circumstances, the view taken by the tribunal does not call for any interference.

4. The insurer have been directed by order dated 16.04.2012 to deposit the awarded amount with up-to-date interest with the Registrar General within four weeks whereupon the same was directed to be held in fixed deposit with UCO Bank, Delhi High Court branch for a period of six months to be renewed from time to time. 50% of the said deposit was allowed to be released by order dated 09.01.2015. The Registrar General shall now take steps to ensure release of the balance to the claimants in terms of the impugned judgment.

5. The statutory amount, if deposited, shall be refunded.

6. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016
VLD