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

Date of Decision: 16th May, 2016

+ **MAC.APP. 627/2007**

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Jyotindra Kumar, Advocate
versus

NANDINI GHOSH ROY AND ANR. Respondents
Through: Mr. J.S. Kanwar, Adv. for R-1&2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 26.10.1991, Bidyut Ghosh Roy, was moving on a motor cycle bearing registration no.DL-3SA-2319 (motor cycle) when it was involved in a motor vehicular accident with a bus bearing registration no.DBP- 6100 (bus) of Delhi Transport Corporation (DTC) resulting in his death. His wife and minor child (respondents) instituted an accident claim case (Misc. No.5/2004) on 28.11.1991 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act), alleging that the accident had occurred due to negligent driving of the bus by Mahabir Singh, an employee / driver of DTC (appellant).
2. The tribunal held inquiry and, by judgment dated 28.11.1991, upheld the case of the claimants about death having occurred due to negligent driving of the bus and awarded compensation in the sum of Rs.4,01,544/-

with interest at the rate of 8% from the date of filing of the petition till realization in favour of the claimants.

3. DTC which was burdened with the liability to pay came with the appeal at hand questioning the said award.

4. At the hearing, the impugned judgment / award is challenged on the ground that the deceased himself was negligent in driving the motor cycle. In support of this contention, the counsel places reliance on the site plan (Ex. PW3/E) depicting the lay out of the road and the position of the vehicles as noted by the investigating police officer at the scene of accident during investigation of first information report (FIR) no.435/1991, which had been registered in PS Ambedkar Nagar on the date of the accident itself. The appellant also submits that while awarding interest by the final judgment, the tribunal failed to take note of the directions in earlier order dated 03.11.2004 whereby while restoring the claim petition (which had been dismissed in default earlier), the tribunal had directed that the claimants will not be entitled to interest for the period 19.02.2002 to 19.08.2004 which represented the period when the petition had remained dismissed in default.

5. Having heard arguments and having gone through the tribunal's record, this court finds no substance in the plea respecting negligence. The site plan (Ex. PW3/E) clearly shows that one part of the road was closed to traffic on account of it being blocked by another bus which had suffered from flat tyre. It is for this reason that bus of DTC had gone into the wrong lane. But, the fact remains that it hit the motor cycle from the rear side. In these circumstances, the onus to explain and justify the collision against the motor cycle was squarely that of the bus driver. Though the bus driver appeared in the witness box (as RW-1) to claim that it was the motor cyclist

who had come at fast speed so as to hit against the front of the bus, this version cannot be believed. The learned tribunal has considered the evidence on record properly and there is no reason why this court should interfere with the finding returned.

6. On the issue of interest, while it is true that by interim order referred to above, the tribunal had earlier decided to deny the interest to the claimants, for the period the petition had remained dismissed in default, there has been delay on the part of DTC as well. Thus, the discretion exercised by the tribunal in the final analysis granting the interest for the entire period does not merit interference.

7. The appeal is found to be unmerited and therefore dismissed.

7. By order dated 19.12.2007, the appellant had been directed to deposit the entire awarded amount with the Registrar General within the period specified. By subsequent order dated 28.11.2008, 50% of the awarded amount was released to the claimants. The Registrar General shall now take requisite steps to release the balance of the deposited amount as well to the claimants. If there is any shortfall, the claimants shall be entitled to take appropriate proceedings before the tribunal. The statutory deposit, if made, shall be refunded.

(R.K. GAUBA)

JUDGE

MAY 16, 2016

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