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

+ CM(M) 1083/2013

SHIKSHA BANSAL & ORS.

..... Petitioners

Through: Mr. C.S. Parashar & Mr. S.K. Badal,
Adv.

versus

VIJAY KUMAR & ORS.

..... Respondents

Through: Mr. Rajeev M. Roy, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **25.01.2016**

Heard.

Perused.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was submitted on 03.06.2010 by the petitioners seeking compensation on account of death of Bal Kishan Bansal in a motor vehicular accident which statedly occurred at 3.30 p.m. on 9.4.2010 in Kurushetra (Haryana) involving heavy transport vehicle bearing registration No. DL-1LK 1291. The petition was entertained as MACT No. 947/2010 by the motor accident claims tribunal at Rohini Courts, Delhi and had reached the stage of final adjudication when on 06.05.2013 the claimants realised that they had not been able to muster any evidence to support the claim on the principle of fault liability and, thus, moved an application seeking the case to be converted to one under Section 163-A of Motor Vehicles Act, 1988. This

request did not find favour with the tribunal which rejected the application by a short order dated 06.05.2013 referring, in the passing, to some judgment passed by a learned single Judge of this Court (Hon'ble Mr. Justice Kailash Gambhir). After the said application had been so dismissed, the tribunal proceeded to pass judgment on the main petition dismissing it on the same date holding the claimants having failed to prove their case on the question of negligence.

The petition at hand was filed questioning the view taken in the short order passed on 06.05.2013 rejecting the prayer for the petition to be converted into one under Section 163-A of Motor Vehicles Act, 1988. The matter was heard by the learned predecessor bench on previous dates when reliance was placed by the petitioners on the view taken by the Gujarat High Court in cases reported as *National Insurance Company vs. Mukeshbhai Bhalchandrabhai Jani* 2004 AIHC 981 and *Narshiji Nagaji Majirana vs. Mangilal Amturam Bishnoi & Ors.* AIR 2004 Gujarat 157. As noted above, the impugned order had referred to some judgment of this court but without giving the citation or other particulars. The matter was adjourned to facilitate an opportunity to both sides to come up with the ruling following which the tribunal took the above noted view. Learned counsel on both sides submit that they have not been able to find any such judgment passed by the learned single judge of this court holding directly or indirectly the view that a petition once filed under Section 166 of Motor Vehicles Act cannot be converted or the claim pressed thereafter under the provisions of Section 163-A of Motor Vehicles Act.

The view taken by the Gujarat High Court in the aforementioned precedents supports the contention of the petitioners. The objection of the respondents, however, is that the petitioners should also have challenged the judgment whereby the claim petition had been dismissed. It is argued that given the said result of the main petition, challenge to the interim order alone is not appropriate.

Against the above backdrop, the learned counsel for the petitioners submitted that if the impugned order were to be set aside, he is under instructions to withdraw the main petition presented under Section 166 of Motor Vehicle Act, 1988 though would pray for liberty to file appropriate fresh claim petition under Section 163-A of Motor Vehicles Act, 1988.

The learned counsel on the other side submits that he has nothing to say.

In above facts and circumstances, the impugned order is set aside. The main petition under Section 166 of Motor Vehicles Act, 1988 is revived on the file of the tribunal but allowed to be withdrawn and is dismissed accordingly. The petitioners are given liberty to move the tribunal afresh under Section 163 A of Motor Vehicles Act, 1988 for appropriate relief in accordance with law. Should the issue of laches or limitation be raised, the tribunal is requested to be indulgent in granting the condonation, bearing in mind the above noted circumstances wherein the fault in choosing the remedy was more of the counsel than of the claimants.

The petition is disposed of in above terms.

R.K.GAUBA, J

JANUARY 25, 2016/nk