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

Date of Decision: 9th February, 2016

+ **MAC.APP. 486/2009**

BABU PRASAD JHA & ORS Appellants

Through: Mr. F K Jha, Adv.

versus

PHOOL CHAND & ORS Respondents

Through: Mr. Anil K Gujral and Mr. Vikram
Gujral, Adv. for R-2
Mr. D K Sharma, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal was preferred under section 173 of Motor Vehicles Act, 1988 (MV Act) to assail the judgment dated 19.08.2009 of Motor Accident Claims Tribunal (the Tribunal) passed on the petition under Section 163A of MV Act, presented by the appellants to claim compensation on account of death of Sumitra Devi in a motor vehicular accident at 1 PM on 10.06.2007 involving bus bearing registration No.DL 1P A-5965 (the offending vehicle), on the ground that the compensation awarded was deficient.

2. The offending vehicle was concededly driven by the first respondent and owned by the second respondent. The third respondent herein was impleaded in the claim petition on the ground that, as per the

information gathered, the offending vehicle was insured against third party risk with the said insurance company covering the relevant period. Though this is a defence also taken by the second respondent herein, the Tribunal, upon inquiry, found the insurance policy (Ex.R3W1/1) relied upon to be a fake document. In this view, the third respondent was absolved of its responsibility and the first and second respondents were directed to pay the compensation to the claimants in the sum of Rs.2,84,000/- with interest at 7.5% per annum from the date of filing of the petition (08.12.2007) till realisation.

3. In appeal, the appellants, *inter alia*, contended that the insurance company should not have been absolved of its responsibility. Reference was made to the first information report (FIR) No.355/2009 of police station Hauz Khas under Sections 420, 406, 468, 471 and 120B of Indian Penal Code, 1860 (IPC) lodged by the second respondent against an insurance agent from whom the purported insurance document was procured by him. It was stated that the criminal case arising out of the said FIR was pending trial in the Court of Metropolitan Magistrate. Nonetheless, over the period, the said contention has been abandoned by the appellants as also by the second respondent.

4. The appellants (claimants) and the second respondents entered into an amicable settlement before the Tribunal in the course of execution proceedings arising out of execution application No.108/2010 on 28.05.2010. In terms of the said settlement arrived at by the parties in question, the compensation awarded by the tribunal was paid by the second respondent to the claimants though subject to the amount of

compensation that was expected by the parties to be awarded by this Court in the appeal at hand.

5. On 17.04.2014, on basis of submission of the counsel for the third respondent, the appeal was dismissed as infructuous for the reason that the parties had settled the matter amicably in the execution forum on 28.05.2010. But, on review petition (241/2014) brought by the appellants, the appeal was restored to the original number by order dated 28.01.2015, taking note of the fact that the settlement arrived at before the execution forum was subject to the decision in the appeal at hand.

6. At the hearing today, the learned counsel for the appellant submitted that the method of computation of compensation adopted by the Tribunal was not correct as the income of the deceased could not have been assumed below the minimum wages payable at the relevant point of time.

7. The learned counsel on both sides fairly conceded that the minimum wage payable as on 10.06.2007 was in the sum of Rs.3,470/- per month and, thus, the said amount may be adopted as the notional income. The learned counsel on both sides further agreed that given the number of dependants, $\frac{1}{3}^{\text{rd}}$ would need to be deducted towards personal and living expenses and, therefore, the loss of monthly dependency would work out to $(3470 \times \frac{2}{3})$ Rs.2,313/- per month. Since the age of the husband, the prime claimant, was about 52 years at the relevant point of time, the Tribunal has correctly adopted the multiplier of 11. Therefore, the total loss of dependency comes to $(2,313 \times 12 \times 11)$ Rs.3,05,316/-, rounded off to Rs.3,06,000/-.

8. The amount of compensation, thus, needs to be enhanced by (3,06,000-2,64,000) Rs.42,000/-. Both sides agree that the enhanced amount of Rs.42,000/- only remains to be paid with interest at 7.5% per annum from the date of filing of the petition till realisation. The learned counsel for the second respondent requests for two months of time to pay the said amount to the claimants (appellants) to which the learned counsel for the appellant readily agrees.

9. The second respondent is, thus, given two months time to deposit the amount as above with up-to-date interest in the Tribunal, failing which the appellants will be at liberty to take out appropriate proceedings before the Tribunal for recovery. The amount deposited or realised in terms of above modified award shall be payable to the first respondent only.

10. The appeal is disposed of in above terms.

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

**FEBRUARY 09, 2016
VLD**