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

Date of Decision: 31.05.2016

+ **MAC.APP. 44/2008**

UNION OF INDIA

..... Appellants

Through: Mr.R.V. Sinha & Mr.A.S. Singh,
Advs.

versus

ANJALA DEVI AND ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Kishori Prasad Singh, 37 year old, working as a cook in the Ministry of Defence was moving on bicycle on 04.04.1999 and when he had reached MASE Officers Mess on Palam, Sadar Bazar Road, Delhi Cantt. at about 8.30 p.m. there was a motor vehicular accident statedly involving an Army Truck bearing registration No. B.A. No. 87 C 4788 W Ly.2 Ton Tata, admittedly driven by the fifth respondent herein (the driver), as a result of which he suffered injuries and died in the consequence. His widow and other dependent family members, first to fourth respondents (claimants), instituted an accident claim case (Suit No. 599/1999) on 15.09.1999 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act). In the said proceedings, besides the fifth respondent (driver), the

appellant was shown in the array as the owner. The tribunal issued notice in answer to which both the said respondents filed written statement wherein the factum of collision involving the Army truck and the cycle of the deceased was admitted but negligence on the part of the Army truck driver was denied. Instead averments were made attributing fault to the deceased cyclist.

2. The tribunal held inquiry, and by judgment dated 01.09.2007 accepted the case of the claimants about death having occurred due to motor vehicular accident caused on account of negligent driving of the army truck. It proceeded to award compensation in the sum of ₹ 10,35,000/- with interest in favour of the claimants fastening the liability on the appellant.

3. By the appeal at hand, the finding of involvement and negligence on the part of the army truck driver was challenged.

4. It is noted that the claimants had examined Madan Singh (PW-5), an eye witness to the occurrence who narrated the sequence of events leading to the accident vide his affidavit (Ex.PW5/A), the said affidavit was tendered in evidence on 24.02.2006 but the opportunity for cross-examination was not availed. Thus, the evidence of Madan Singh (PW-5) has gone unchallenged. On the other hand, Maheshwari Ram, truck driver was examined as R1W1 on the strength of his affidavit (Ex.R1W1/A). In the said affidavit, he testified about the cyclist having approached the scene where he was driving the truck at a low speed and falling down 2-3 feet away from the vehicle after losing balance. Thus, he tried to give an impression that there was no collision between truck and cyclist. During

cross-examination, R1W1 admitted that in the pleadings in the written statement the factum of collision was admitted. The witness initially stated that what was deposed by him in the affidavit was the correct version. But at the fag end of his cross-examination, he admitted that the cycle had come in contact with the body of the truck. In these circumstances, the version of R1W1 does not inspire confidence. Be that as it may, the evidence of Madan Singh (PW-5) having gone unchallenged, there is no reason why the finding of involvement of the truck and negligence on the part of its driver should be interfered with.

5. This appeal is unmerited and dismissed.

6. By order dated 23rd January, 2008, the appellant had been directed to deposit the entire awarded amount with the Registrar General within the period specified, out of which 75% was allowed to be released to the claimants. The balance lying in deposit shall now be released to the claimants in terms of the impugned judgment.

7. A copy of this judgment shall be sent by the registry to the claimants by registered post at their given addresses.

(R.K. GAUBA)
JUDGE

MAY 31, 2016

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