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

Date of Decision: 31.05.2016

+ **MAC.APP. 30/2008**

INSTITUTE OF DEFENCE SERVICES & ANALYSIS... Appellant
Through: None.

versus

JOGI YADAV AND ANR. Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. First and second respondents (Jogi Yadav & Balwanti) had instituted an accident claim case (384/2002) on 26.10.2002 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988, for the death of their son Havaladar statedly in a motor vehicular accident that had occurred on 03.08.2002 at about 16.40 hours in the area of R.K. Puram involving negligent driving of Ambassador Car bearing registration No. DL 9CC 1546 (the car). The appellant, being the registered owner of the car, was impleaded as second respondent in the said proceedings, in addition to Umed Singh, its employee (driver) on the averments that the latter was at the driving wheel of the car at the time of mishap. The claim case was contested by the appellant and the said driver.

2. The tribunal, upon inquiry, by judgment dated 17.11.2007 returned a finding accepting the case of the claimants that Havaladar had died due to negligent driving of the car. Compensation in the sum of Rs. 1,78,300/- was awarded in their favour holding besides the driver, the appellant jointly and severally to pay.

3. By the appeal at hand, the finding about involvement of the car and negligence on the part of its driver was challenged.

4. The appeal was entertained and notices were issued by order dated 16.01.2008. It was dismissed in default on 13.05.2009. On application later moved, the appeal was restored by order dated 29.05.2009. It was listed on several dates, but every time it had to be adjourned. By order dated 22.04.2010, it was directed to be put in the category of regular matters to come up on its own turn. Thereafter, whenever the appeal has been taken up, none would appear on behalf of the appellant to assist. This has continued to be the state of affairs even today. This appeal is the oldest on board of this Court and there is no reason why hearing should be deferred yet again.

5. Having gone through the grounds of appeal and the tribunal's record, this Court finds the contentions raised by the appellant to be devoid of substance.

6. At the hearing before the tribunal, Babu Ram (PW-3), real brother of the deceased had appeared on the strength of his affidavit (Ex.PW3/A), he narrated the sequence of events leading to the fatal occurrence. The accident had occurred in his presence. Umed Singh, the employee and driver of the

offending vehicle had also appeared in the witness box (as R1W1), on the basis of his affidavit (Ex.RW1/A) had testified that there was no such accident involving the car driven by him. It is, however, noted by the tribunal that the local police having registered FIR (First Information Report No. 457/2002) in police station R.K. Puram, concerning the motor vehicular accident gathered evidence regarding involvement of the car and thus, had seized the same. Umed Singh, employee of the appellant was also arrested on 06.08.2002 on the basis of evidence showing negligent driving of the car by him leading to the fatal occurrence. The tribunal has examined the evidence on both sides and has reached conclusions affirming pleas of the claimants on the test of preponderance of probabilities. Noticeably, Umed Singh, has not challenged the finding holding him responsible for the factual accident.

7. In these facts and circumstances, this Court finds no reason to interfere with the conclusions reached by the tribunal.

8. Thus, the appeal is unmerited and dismissed.

9. By order dated 16.01.2008, the appellant was directed to deposit the entire awarded amount with the Registrar General whereupon the execution was ordered to be stayed. When the appeal was dismissed in default on 13.05.009, the amount thus deposited was allowed to be released with upto date interest along with statutory deposit.

10. Upon the application for restoration being moved, the stay was again pressed. But the learned Single Judge then dealing with the matter by his order dated 29.05.2009, found no good reasons for restoring the *ex-parte*

stay. He, however, noted that as per the award granted by the tribunal only 30% was to be released, the balance to be kept in fixed deposit receipt for a period of seven years. He, thus, directed the registry to ensure that 70% of the awarded amount was put fixed deposit for a period of seven years, the original deposit to be retained by the claimants and its copy and particulars to be kept on record by the registry. In these circumstances, no further directions are required. The claimants are entitled to retain the amount already released in accordance with the judgment of the tribunal.

11. A copy of this judgment shall be sent by the registry to the claimants and the insurance company.

MAY 31, 2016
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(R.K. GAUBA)
JUDGE

