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

Date of Decision: 18th February, 2016

+ **MAC.APP. 415/2015**

U P STATE BRIDGE CORPORATION LTD Appellant
Through Ms. Nishtha Garg, Adv.

versus

SAFDAR AHAMAD KHAN & ORS Respondent
Through Mr. Pravin Sharma and Ms. Kanika
Sharma, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. A very short issue arises in this appeal concerning the levy of interest on the awarded compensation for the period the claim petition had remained dismissed in default.
2. The claim petition was preferred on 07.03.2002 by the first to seventh respondents herein under Section 166 read with Section 140 of Motor Vehicles Act (MV Act) to seek compensation on the ground of death of Shabeer Ahmad that had occurred on 15.02.2001 involving the motor vehicle of the appellant company. It was decided by judgment dated 31.03.2015 whereby compensation for the sum of ₹2,80,152/- was awarded with interest at 9% per annum from the date of filing of the petition (07.03.2002). The grievance of the appellant is that the petition having been

dismissed for non-prosecution and in default on 28.08.2006 and having been restored on the application of the claimants only on 11.01.2013, there is no justification for the appellant being burdened with the interest for the said period.

3. The learned counsel for the claimants, on the other hand, submitted that since the petition was restored subject to cost of ₹1,000/- deposited with Legal Services Authority (South), there is no reason why the interest for the in question period be denied. He also submitted that if at all the claimants are to be penalized in the matter of interest for the period the claim case remained “dead”, he would have no objection if the burden of interest for the aforementioned period is shared equally.

4. The copies of the proceedings submitted on record show that the Tribunal was constrained to dismiss the claim petition on 28.08.2006 observing that in spite of opportunities granted and the caution that it was last opportunity and even costs being imposed, the claimants had not adduced any evidence. It is noted from the copy of the said order that no one was present for the claimants on the said date. Thus, the claim petition was dismissed for non-prosecution and in default. It is further seen from the proceedings recorded on 11.11.2010 that an application for restoration was moved which had remained pending over several dates starting with 14.01.2007 onwards. But no steps were taken and the said application was dismissed in default on 11.11.2010. It is another application for restoration moved after 11.11.2010 which eventually resulted in the claim case being restored with costs imposed as noted above.

5. Imposition of cost or its deposit with Delhi Legal Services Authority is no solace to the appellant. There is no justification for the appellant being burdened with the liability on account of interest for the period the claimants themselves were not diligent, or rather were negligent in prosecuting their claim case.

6. The appeal is, thus, allowed. It is directed that the claimants shall not be entitled to interest over the awarded compensation for the period starting with 28.08.2006 and ending with 11.01.2013.

7. The counsel for the appellant submits under duress on account of warrants having been issued by the Tribunal to enforce the recovery, the entire awarded compensation with interest in terms of impugned judgment was deposited with the Tribunal. The Tribunal shall now recompute the amount payable to the claimants and release the same in accordance with the modification ordered by this Court as noted above, refunding the excess recovered/realized to the appellant.

8. Statutory deposit, if made, shall be refunded.

9. The appeal with all pending applications is disposed of in above terms.

10. Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 18, 2016
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