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

+ **MAC.APP. 328/2009**

**THE NEW INDIA ASSURANCE CO. LTD.** ..... Appellant  
Through: **Mr. Pankaj Seth and Mr. Shoumik  
Mazumdar, Advocates**

versus

**RAM DHARI PAL AND OTHERS** ..... Respondents  
Through: **Nemo**

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**ORDER**  
**14.02.2017**

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In a road accident on 9<sup>th</sup> April, 2007, one *Subhash Chand* aged 22 years had died and vide impugned Award of 1<sup>st</sup> October, 2008, his legal heirs have been granted compensation of ₹4,98,333/- while treating the claim petition to be one under Section 163-A of *Motor Vehicles Act, 1988*. The factual position narrated in impugned Award needs no reproduction for the reason that challenge to impugned Award in this appeal is on the ground of quantum of compensation awarded.

The precise submission of learned counsel for appellant-Insurer is that after the evidence was led, it was not proper for learned Tribunal to have converted the petition from one under Section 166 of *Motor Vehicles Act, 1988* to one under Section 163-A of *Motor Vehicles Act, 1988* as it is apparent from the evidence on record that the deceased was earning much more than ₹40,000/- per annum. Respondents were duly represented by counsel. It is so evident from order of 9<sup>th</sup> December, 2009.

At the final hearing of this appeal, learned counsel for appellant-Insurer was called upon to inform learned counsel for respondents-claimants about the next date of hearing in this appeal and the needful is done. Still, none has appeared on behalf of respondents.

Upon hearing and on perusal of impugned Award, it becomes clear that appellant's application under Section 170 of *Motor Vehicles Act, 1988* has been already dismissed by learned Tribunal vide order of 31<sup>st</sup> January, 2008. It is so recorded in paragraph No.5 of impugned Award.

In view of dismissal of appellant's application under Section 170 of *Motor Vehicles Act, 1988*, appellant is precluded from assailing impugned Award on the quantum aspect. Accordingly, this appeal is dismissed.

Statutory deposit, if any, be refunded to appellant-Insurer as per Rules.

**(SUNIL GAUR)**  
**JUDGE**

**FEBRUARY 14, 2017**

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