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

Decided on: 13th September, 2017

+ **MAC APPEAL No. 275/2010**

ANAND SINGH & ANR. Appellants
Through: **Mr. O.P. Mainee, Adv.**

versus

JOGINDER & ORS. Respondents
Through: **Mr. J.P.N. Shahi, Adv. for R-3.**

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

JUDGMENT (ORAL)

1. The claim case (suit no. 42/06/09) of the appellants related to death of their child Shilpa aged 8 years, in motor vehicular accident that occurred on 30.07.2006, it having been clubbed with other claim cases for inquiry and decided by common judgment dated 16.11.2009. As per the averments, the accident had occurred due to negligent driving of tempo bearing registration no. DL 1LA 6412 by Joginder (first respondent), it being registered in the name of Gajraj Singh Yadav (second respondent) and insured against third party risk with New India Assurance Company Ltd. (third respondent). The third respondent (insurer) had raised the plea of breach of terms and conditions of the insurance policy which was accepted and consequent

upon such finding, the insurer was granted recovery rights against the driver and owner.

2. The claimants are in appeal submitting that the award in the total sum of Rs. 2,36,000/- was inadequate and, thus, seeking enhancement. When the appeal was presented and considered for the first time on 28.04.2010, notice was accepted for and on behalf of the third respondent thereafter the appeal was admitted and it was directed to be put in the category of 'regulars'. There was prayer made for notices to be issued to the driver or owner of the vehicle at that stage. Any enhancement in the compensation would have a bearing adverse to the interest of the first and second respondents since they face the recovery rights. In this fact-situation while raising several issues about the method of computation of compensation, also relying in the process on certain decisions of this court including by *Chetan Malhotra v. Lala Ram*, MAC.APP.554/2010, decided on 13.05.2016. The learned counsel for the appellant submitted that the case may be remanded to the tribunal for fresh adjudication so that it can be determined again, after requisite notice to the first and second respondents.

3. The learned counsel for the insurer on being asked submitted that he has nothing to say on the matter and would leave it to the discretion of the court.

4. The request for and on behalf of the appellants have been found to be just and proper. The appeal is allowed, the impugned judgment insofar as it concerned the compensation on account of death of Shilpa, child of the appellants, is set aside. The issue of determination

of compensation in the said case is remitted to the tribunal for fresh adjudication. Needless to add, the amount already received by the appellants will be liable to be adjusted. The parties are directed to appear before the tribunal on 12th October, 2017.

5. Before proceeding further, the tribunal shall issue notice to the driver and owner of the vehicle.

SEPTEMBER 13, 2017

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R.K.GAUBA, J.

