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

Decided on: 13th September, 2017

+ **MAC APPEAL No. 125/2010**

HIMANSHU GUPTA Appellant
Through: **Mr. Navneet Goyal, Adv.**

Versus

VINOD & ORS. Respondents
Through: **None.**

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

JUDGMENT (ORAL)

1. The appellant, then a boy aged 14 years, was riding a motorcycle bearing registration no. DL 7S AV 3722, concededly unauthorisedly and against all caution including in the law, on 07.08.2007 when he came to be involved in an accident with Tanker bearing registration no. DL 1M 0306 of Delhi Jal Board (the second respondent), it being driven by its employee Vinod (first respondent) and suffered grievous injuries. The accident claim case (petition no. 254/2007) was instituted on his behalf by his father and next friend Sanjay Gupta with the averments that the accident had occurred due to negligence on the part of the driver of the tanker, invoking Section 166 of Motor Vehicles Act, 1988. The tribunal held inquiry and, by

judgment dated 14.01.2010, returned a finding that the accident had occurred solely due to negligence of the appellant himself and in that light declined to grant any compensation.

2. Though the appeal was filed challenging the above adverse finding on the issue of negligence, at the hearing, the learned counsel for the appellant submits, on instructions, that since the appellant had suffered permanent disability, some evidence in such regard having been adduced during the inquiry before the tribunal through the mouth-piece of Sanjay Gupta (PW-4), the facts showing involvement of the tanker, his claim petition may be treated as one under Section 163 A of Motor Vehicles Act, 1988 so that he can avail of the compensation which is admissible under the structured formula on the principle of no fault liability. The counsel submitted that for such purposes, the case will have to be remanded since he would also like to move an application for evaluation of the permanent disability, *inter alia*, by medical opinion.

3. The prayer for conversion of the claim case to one under Section 163 A of Motor Vehicles Act, 1988 is granted subject to just exceptions. The impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry treating the claim petition as one pressed under Section 163 A Motor Vehicles Act, 1988.

4. The parties are directed to appear before the tribunal on 10th October, 2017.

5. Though the respondents had due notice of the appeal at hand, at the final hearing, there is no appearance on their behalf. Therefore, in

all fairness, the tribunal shall issue fresh notices to them to secure their presence for afore-mentioned purposes.

R.K.GAUBA, J.

SEPTEMBER 13, 2017

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