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

Decided on: 22nd August, 2017

\+ MAC.APP. 148/2017

SAROJ GUPTA & ANR ..... Appellants

Through: Mr. Manu Shahalia, Advocate

versus

HARIOM CHAUDHARY & ORS (TATA AIG GEN INS CO LTD) ..... Respondents

Through: Mr. Rudhra Kahlon & Ms. Vandana Kahlon, Advocates.

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

JUDGMENT (ORAL)

1. The claimants are aggrieved with the judgment dated 23.09.2016 of the motor accident claims Tribunal whereby their claim petition (MACT 3649/2016) was decided, it having been filed in the wake of detailed accident report (DAR) submitted by the station house officer (SHO) of police station Hazrat Nizamuddin on the basis of the investigation into first information report no. 490/2015 respecting the motor vehicular accident that had occurred on 30.07.2015 resulting in death of Sakshi Gupta, aged about 26 years at the relevant point of time. The Tribunal has awarded compensation in the sum of Rs. 6,87,760/- fastening the liability on the third respondent, it being the insurer against third party risk of the motor vehicle which was

statedly driven in a negligent manner that being the cause for the accident.

2. The claimants in the appeal raise procedural issues, their objections meriting acceptance.

3. The SHO of the police station concerned had submitted DAR, which in terms of the prevailing norms, was registered as claim petition under Section 166 (4) of Motor Vehicles Act, 1988 on 04.01.2016. The second appellant, younger sister of the deceased, she statedly being also a dependent in addition to her mother (first appellant), had appeared before the tribunal on the very day, the DAR was submitted. Sakshi Gupta (the victim), at that time was still alive, she being under treatment for the injuries suffered. The driver, owner and insurer of the vehicle in question were duly represented. The Tribunal adjourned the matter to 09.02.2016 calling upon the insurer to submit "legal offer" and, in the alternative, for conciliation efforts to be made or reply to be submitted.

4. On 04.03.2016, the tribunal noted that the legal offer had already been filed by the insurance company. The Tribunal's record, however, shows the legal offer to have been filed in writing on 23.09.2016 (page 59 of the Tribunal's record). Be that as it may, the matter was adjourned for consideration of the legal offer to 12.05.2016.

5. Sakshi Gupta, the victim, however, expired, during the interregnum. This fact was brought to the notice of the tribunal on

12.05.2016, and a request for time to file "fresh petition" was made on behalf of the claimants and the tribunal adjourned the case to 27.07.2016.

6. On 27.07.2016, it was noted that claim petition had been filed by the appellants herein which was clubbed with the DAR. The matter was adjourned for filing of reply on 11.08.2016.

7. On 11.08.2016, the tribunal noted some deficiency in that the post mortem was still not on record. Process was issued to the concerned police official and the matter was adjourned to 20.09.2016 for "reply of the respondents".

8. On 20.09.2016, the insurer through counsel submitted that its "legal offer" was already on record which was being reiterated. The matter was adjourned to 23.09.2016 for "consideration of the legal offer", as well as the reply of the remaining respondents.

9. On 23.09.2016, the impugned judgment was passed, the tribunal noting on the very first page that legal offer had been filed which had been perused. The tribunal, thereafter, proceed to calculate the loss of dependency and added awards under the non-pecuniary heads of damages to determine the compensation payable.

10. It is the grievance of the claimants that in the entire process, they were not given any opportunity to lead evidence. It is submitted that the legal offer made by the insurance company in the sum of Rs. 5,97, 455/- was not acceptable to them as it was highly deficient and

that submissions to this effect had been made to the tribunal orally on 23.09.2016 which were not taken note of .

11. Having perused the tribunal's record, this Court finds that the procedure adopted by the tribunal was wholly misdirected. The legal offer by the insurance company would not bind the claimants unless they were to submit consent for an order of compensation to be passed on its basis. If the offer made by the insurance company was not acceptable to the claimants, the normal procedure of inquiry would apply. The tribunal was duty bound to hold an inquiry. It could not have assumed that the claimants would be accepting the amount determined by it on the basis of material submitted with DAR. They are entitled in law to present the entire facts including, and particularly, on the subject of earnings of the deceased, the element of future prospects and the extent of dependency loss, this in addition to, what is also one of the grievances urged, the extent of medical expenses that were incurred for treatment of the victim during the period she remained alive after the accident.

12. Given the deficiency in the procedure, the impugned judgment cannot be sustained. It is accordingly set aside. The matter is remitted to the tribunal for proper inquiry, in accordance with law, on the claim petition of the appellants.

13. The parties shall appear before the tribunal for further proceedings on 19th September, 2017.

14. The presence of the driver and owner of the offending vehicle was dispensed with during the hearing on the appeal at hand by order dated 08.03.2017. In this view, the tribunal would be obliged to issue requisite processes to secure their presence as well.

15. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST22, 2017
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