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

Decided on: 13th October, 2017

+ **MAC APPEAL 372/2011 and CM 8578/2011**

**U.P. STATE ROAD TRANSPORT
CORPORATION**

.... Appellant

Through: Ms. Garima Prashad and Mr.
Shadab Khan, Advocates

versus

MAMTA DEVI & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant is the owner of the bus bearing registration no.UP-81R-9018, the negligent driving of which statedly resulted in a motor vehicular accident on 20.04.2008 causing the death of Kripal Singh giving rise to the cause of action in favour of the first to fifth respondents (collectively, the claimants) to seek compensation through accident claim case (MACT 490/2010) instituted on 04.07.2008. Concededly, the bus was driven at the relevant point of time by Chahat Khan, an employee of the appellant engaged as a driver.

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 27.11.2010, returned a finding that the accident and the fatality occurred due to the negligent driving of the bus by the said

person and fastened the liability to pay the compensation thereby determined on the appellant.

3. The appellant seeks to assail the impugned judgment on the ground that there was contributory negligence on the part of the deceased as he while driving his vehicle Wagon-R car bearing registration no.DL-3C-AG-6335 and had come wrongly in the path of the bus.

4. In order to substantiate the above mentioned contention, the appellant with permission obtained from this court has led additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC) by examining Krishan Kumar Dikshit (AW-1) on 03.09.2014 primarily to prove copy of site plan (AW1/1), which was prepared by the said person at the instance of the appellant.

5. The learned counsel for the appellant has been heard at length. The record has been perused.

6. It is noted that the claimants had examined, amongst others, Anup Singh (PW-2) to bring home the allegations of negligence on the part of the bus driver. The evidence of the said witness remained unimpeached. Though Chahat Khan (driver) also appeared in person (as R1W1) and tried to shift blame on to the deceased, it was never taken as a plea that the said vehicle had come into the wrong lane. Such fact has not been substantiated even by any corresponding record of the investigation by the police. The site plan (Ex. AW1/1) submitted as additional evidence under Order XLI Rule 27 CPC was not even shown to the witness of the claimants.

7. In the facts and circumstances, the plea cannot be accepted. The conclusions reached by the tribunal on the principle of preponderance of probabilities do not call for any interference.
8. The appeal and the pending application are dismissed.
9. By order dated 25.05.2011, stay was granted subject to the appellant depositing the entire awarded amount with up-to-date interest with the Registrar General of this court and out of such deposit, fifty percent (50%) was allowed to be released as per subsequent order to the claimant. The Registry shall release the balance to the claimants in terms of the impugned award.
10. The statutory amount shall be refunded to the appellant.

OCTOBER 13, 2017

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R.K.GAUBA, J.



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