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

Decided on: 2nd August, 2017

\+ MAC.APP. 792/2014

SAROJ KUWAR & ORS ..... Appellants

Through: Mr. Arun Sharma, Advocate

versus

SURESH SINGH & ORS ..... Respondents

Through: Ms. Archana Gaur, Advocate for R-3/NIC.

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

JUDGMENT (ORAL)

1. On the claim petition (Suit No.101/2009) of the appellants arising out of the death of Amit Kumar in a motor vehicular accident that occurred on 10.12.2008, proven to be on account of negligent driving of truck bearing registration no.HR-38G-4311 by the first respondent, it concededly being insured against the third party risk with the third respondent (the insurer) at the instance of the second respondent (the registered owner), the Motor Accident Claims Tribunal (the tribunal) by judgment dated 26.04.2011 awarded compensation in the sum of Rs.7,19,200/- and directed that it shall be joint and several liability of the first and second respondents to pay, the insurer having been exonerated, its plea about breach of terms and conditions of the insurance policy having been accepted on the basis

of findings returned that there was no valid permit covering the vehicle in question and that the driving licence presented by the first respondent was fake.

2. By the appeal at hand, the claimants seek enhancement of the compensation on the ground that the loss of dependency was not properly calculated as the proof about the income of the deceased from his private employment with entity known as Parkar Power Systems Limited was ignored. The claimants also submitted that the insurance company should have been called upon to pay the compensation and on account of breach of terms and conditions of the policy, it should have been granted recovery rights.

3. The first contention concerning the loss of dependency cannot be accepted. The tribunal has given sound reasons for rejecting the evidence of the first claimant (PW-1) with regard to private employment. No cogent proof about such employment was adduced. Therefore, the tribunal was justified in making assessment on the basis of minimum wages of a graduate.

4. The second contention, however, must be accepted. The insurance company had undertaken the liability to cover third party risk. If there is breach of terms and conditions of the insurance policy, it can always recover the amount from the person insured or the driver, who have been held jointly and severally liable to bear the burden of the compensation.

5. For the foregoing reasons, the third respondent is directed to satisfy the award in favour of the claimants (appellants) by requisite deposit with the tribunal within thirty days, making it available to be released to the claimants. The insurance company (the third respondent) thereafter, may take out appropriate proceedings to recover the said amount from first and second respondents who, even otherwise, were held jointly and severally liable to pay by the tribunal.

6. The appeal is disposed of in above terms.

7. *Dasti.*

R.K.GAUBA, J.

AUGUST 02, 2017
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