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

Decided on: 23rd October, 2017

+ **MAC APPEAL No. 499/2011**

GEMINI FOOD & BEVERAGES PVT. LTD. Appellant
Through: None.

versus

OMWATI & ANR. Respondents
Through: Ms. Shantha Devi Raman &
Mr. Arihant Jain, Advs. for R-1.

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

JUDGMENT (ORAL)

1. The first respondent had instituted accident claim case (suit no. 520/2008) on 03.08.2006 seeking compensation on account of death of her son Vikash Sharma in a motor vehicular accident that occurred on 01.06.2005. Pertinent to mention here that in the said claim case Babli Sharma, the widow of Vikash Sharma was also impleaded as third respondent. She, however, died on 07.11.2006 and consequently her name stood deleted from the array of parties.
2. The claim case had initially resulted in judgment dated 17.03.2008, rendered *ex-parte*, the appellant herein being one of the party respondents held liable to pay the compensation thereby determined. On its application under Order IX Rule 13 of the Code of

Civil Procedure, 1908 (CPC) the said judgment was set aside by order dated 13.08.2008 of the tribunal.

3. After the proceedings had been revived, the tribunal held further inquiry. The appellant had been impleaded in the said proceedings, it being the registered owner of motor vehicle described as Vikram Tempo bearing registration no. DL 1LC 2962 (tempo) which was driven at the relevant point of time by deceased Vikas Sharma, it statedly having been hit from behind by maruti car bearing registration no. UME 6687 (the car). The appellant resisted the said claim, *inter alia*, pointing out that it was the registered owner of the vehicle and the employer of the deceased who was driving it, the claim being under Section 163A of Motor Vehicles Act, 1988. The tribunal, however, by judgment dated 19.02.2011, awarded compensation in the total sum of Rs. 2,25,000, holding the appellant liable to pay the said amount.

4. The appeal questions the judgment of the tribunal, *inter alia*, reiterating the above-mentioned defences. The appeal was put in the list of 'regulars' to be taken up on its own turn as per order dated 19.11.2012. When it is called out, there is no appearance on behalf of the appellant. The claimant is, however, present through counsel who has been heard.

5. During the course of hearing, the learned counsel for the claimant fairly conceded that the judgment would deserve to be set aside, but her request is that the matter may be remitted to the tribunal so that the claimant may take steps to implead the driver, owner and

insurer of the car as party respondents, involvement of which vehicle is also borne out from the material on record.

6. In above view, the appeal is allowed, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry.

7. The parties are directed to appear before the tribunal on 22nd November, 2017. The claimant will be at liberty to implead additional respondents to the claim case.

8. By order dated 27th May, 2011, the operation of the impugned award was stayed subject to the appellant depositing the entire awarded amount with the Registrar General and from out of such deposit, 75% was allowed to be released to the claimant, the balance kept in fixed deposit receipt. The amount lying in balance shall be presently refunded with statutory deposit to the appellant. The amount already received by the claimant will be liable to adjustment against the award that may be passed by the tribunal. In case the appellant is not held liable to pay, the tribunal will issue necessary directions.

9. *Dasti.*

OCTOBER 23, 2017

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R.K.GAUBA, J.