

\$~45

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

*Decided on: 21<sup>st</sup> July, 2017*

+ MAC.APP. 315/2009 and CM APPL.17237/2009  
ANGOORI DEVI & ORS. .... Appellants  
Through: Mr. Rajesh Kumar, Advocate  
versus

HARIT KUMAR & ORS. .... Respondents  
Through: Mr. Ram. N. Sharma, Advocate  
for R-3 with Shri Alok Srivastava, Regional  
Manager.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Amar Nath son of Shri Sakatu Ram had filed accident claim case (petition No.577/2008 originally 50/2006) on 22.04.2006 seeking compensation for injuries suffered by him in a motor vehicular accident that had occurred on 11.04.2006, statedly involving motor vehicle bearing registration no.HR-46B-2688, concededly insured against third party risk with the third respondent herein. As per the averments in the abovesaid petition, the accident had resulted in grievous injuries being sustained, both lower limbs having been damaged. Even before the respondents (which included the insurer, driver and owner of the above mentioned vehicle), could be served, the original claimant died on 14.05.2006, during treatment in hospital. On application moved, his wife and two minor children, they being the appellants herein, were allowed to prosecute the claim case further,

having been substituted in his place as the claimants. The amended petition which came on record would plead that the death had occurred due to the injuries suffered in the accident.

2. The tribunal held inquiry and, by judgment dated 12.03.2009, awarded compensation in the sum of Rs.11,300/- with interest at 7.5% per annum, such award having been computed including Rs.3,000/- towards medicines and medical treatment, Rs.3,300/- towards loss to estate and loss of income, Rs.2,000/- towards special diet and Rs.3,000/- towards conveyance. The tribunal observed in the said judgment that since original claim was filed for compensation for injuries, the claimant having died such claim would not survive, it being personal to the victim.

3. The claimants filed the present appeal in July, 2009, their prime contention being that the death had occurred due to the injuries suffered in the accident and, therefore, the loss of dependency also had to be compensated besides there being a case for award of non-pecuniary damages under other customary heads like loss of love and affection, loss of consortium, loss to estate and funeral expenses, etc.

4. By order dated 07.12.2009 a learned Single Judge of this court then dealing with the matter directed the Medical Superintendent of Aruna Asaf Ali Hospital, Rajpur Road, Delhi to send the record of the MLC No.1081/2006 dated 11.04.2006. This direction was reiterated by subsequent order dated 08.03.2010. Pursuant to the said directions, a copy of the said MLC has come on record.

5. The chronology of events, and some material on record, seem to substantiate the submissions of the claimants that the death had indeed occurred due to the injuries suffered in the accident. The accident had occurred on 11.04.2006. The record indicates the pelvic region and both lower limbs had been crushed and the bones fractured. The victim remained hospitalized till he passed away on 14.05.2006. It does appear that during the inquiry at the instance of the claimants, Dr. Hemant Gupta (PW-2) of Hemant Hospital, Malviya Chowk, Roorkie, U.P. appeared to prove certain record of treatment. He stated that the victim had died on 14.05.2006 “*due to cardio respiratory failure*”.

6. In the claim petition as originally presented Amar Nath had described himself as a self-employed vegetable seller, who was 39 years old at relevant time. In absence of any claim or proof that he suffered from any heart ailment, it required examination as to what had triggered the cardio respiratory failure on 14.05.2006. It would perhaps not call for much imagination to draw some possible connection between the injuries suffered and the said cardio respiratory failure. The lower part of the body having been mutilated and crushed, multiple bones fractured, the possibility of cardiac failure triggering due to the injuries cannot be ruled out.

7. It appears that the tribunal did not hold proper inquiry to go deeper into the issue. This may have resulted in miscarriage of justice.

8. In above facts and circumstances, the request now made by the appellants for the case to be remitted to the tribunal for further inquiry must be accepted so that they can bring home the necessary evidence to prove co-relation between the injuries and the cardiac failure

leading to the death. Needless to add, if they succeed in establishing this connection, they would be entitled to compensation as if it were the claim case arising out of the fatal accident rather than being made to feel satisfied with the meager award on account of injuries as has been granted by the impugned judgment.

9. The proceedings of the Tribunal indicates the case was not properly prosecuted or inquired into, part of the blame for this being on account of inadequate or deficient assistance from the side of the counsel for the claimants. If the Tribunal, in the further inquiry, finds similar deficiency, it shall take suitable steps possibly by appointing an *amicus curiae* or taking assistance of an advocate from legal services authority.

10. For the foregoing reasons, the impugned judgment is set aside. The case is remitted to the Tribunal for further inquiry in accordance with law and for fresh decision.

11. The parties shall appear before the Tribunal on 18.08.2017.

12. Needless to add, the case being of old vintage, the tribunal shall give primacy and hold expeditious proceedings so as to render its fresh judgment at an early date not later than three months from the date of next appearance mentioned above. All parties and their respective counsel are directed to co-operate with the Tribunal.

13. The pending application also stands disposed of.

**R.K.GAUBA, J.**

**JULY 21, 2017**

**vk**