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

Decided on: 15th September, 2017

+ **MAC APPEAL No. 399/2010**

PHOOL DEVI & ORS. Appellants
Through: **Mr. O.P. Mannie, Adv.**

versus

NITIN CHOPRA & ANR. Respondents
Through: **Mr. Pradeep Gaur, Adv. for R-2.**

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

JUDGMENT (ORAL)

1. Hari Singh, while moving on motorcycle bearing registration no. DL 8S AB 0993 on 26.02.2007 at about 3:00PM statedly suffered injuries due to motor vehicular accident that involved another motorcycle bearing registration no. DL 7S AM 9841, which was admittedly insured against third party risk with the second respondent (insurer). It is stated that after suffering injuries, he was taken to a hospital for treatment. He was discharged from the hospital on 06.03.2007 because of non-availability of bed for indoor treatment. He remained unconscious till 11.03.2007 when his condition deteriorated and while being taken again to the hospital he died due to injuries suffered in the said accident.

2. The appellants instituted an accident claim case (MACT 730/08/07) on 12.04.2007 before the motor accident claims tribunal seeking compensation under Section 163A Motor Vehicles Act, 1988. The tribunal held inquiry in the course of which the first claimant (first appellant) appeared as her solitary witness (PW-1) on the strength of her affidavit (Ex.PW-1/A). The tribunal dismissed the claim petition, by judgment dated 23.12.2009, holding that there was no proper proof drawing connection between the injuries suffered in the accident and the event of death, referring in this context to absence of any report of death to the police, absence of post-mortem examination on the dead body and the fact that in the corresponding criminal case, the first respondent herein, the driver of the said other vehicle was prosecuted only for offences under Sections 279/338 of Indian Penal Code, 1860.

3. At the hearing, the learned counsel for the claimants/appellants submitted that on account of improper legal advise and deficiency in the effective prosecution of the claim petition, requisite evidence to bring connection between the injuries suffered in the accident and the death could not be brought out. The counsel submitted that the impugned judgment may be set aside and the matter may be remitted to the tribunal for further opportunity to adduce appropriate evidence. In the facts and circumstances noted, the request is found to be correct. The tribunal, in fact, should have been more proactive in searching for the entire truth, taking note of the fact that the date of the accident and the date of death are too close to each other.

4. The impugned judgment is set aside. The claim case is remitted to the tribunal for inquiry in the course of which the claimants will be

entitled to lead further evidence. Needless to add, the parties which contest shall also be given similar opportunity to lead evidence, if any, before the case is adjudicated afresh.

5. The parties shall appear before the tribunal on 24th October, 2017.

6. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 15, 2017

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