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

Decided on: 02nd August, 2017

+ MAC.APP. 356/2008 and CM 8596/2008 and 11196/2009

SHAMIM KHAN & ANR. Appellants

Through: Mr. Pankaj Gupta for Mr. P.C.
Aggarwal, Advocate

Versus

RAMKALI & ORS Respondents

Through: Mr. A.K. Soni, Adv. for R-9 & 10
Mr. Sameer Nandwani and Mr. P.Acharya,
Advocates for R-11

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Pooran Singh, the husband of the first respondent and the bread winner for other members of the family, they being second to sixth respondents (collectively, the claimants), was travelling in a motor vehicle described as Tata Sumo bearing registration no.HR-63-6854 (Tata Sumo) on 08.10.2005 from Delhi to Aligarh (U.P.). The vehicle met with an accident in the area of police station Lodha, Aligarh involving collision against another vehicle described as an ambulance bearing registration no.UP-81N-9900 (ambulance) and died as a result of the injuries suffered.

2. The claimants instituted accident claim case (suit no.131/06) impleading the driver, owner and insurer of the ambulance they being seventh, eight and ninth (as also tenth) respondents herein besides the driver and owner of the Tata Sumo (they being the appellants) in addition to its insurer (eleventh respondent herein). Noticeably, the allegations in the claim proceedings were that drivers of both vehicles were negligent. Further, noticeably, the eleventh respondent, the insurer of the Tata Sumo took the defence, *inter alia*, that it was not liable to indemnify since the vehicle was being plied for commercial purposes which was in breach of the insurance policy (Ex. R6W1/3).

3. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 17.04.2007, awarded compensation in the sum of Rs.2,30,000/- in favour of the claimants. It found the drivers of both the vehicles guilty of contributory negligence and apportioned the liability amongst them in the ratio 50:50. The Tribunal directed the insurer of the ambulance (ninth / tenth respondent) to pay the compensation but granted right to it to recover 50% from the appellant herein, insurer of the Tata Sumo having been exonerated.

4. The appeal was filed by the appellants primarily contending that the first appellant, the driver of Tata Sumo had also suffered injuries in the process and that the vehicle had been taken out not for any remuneration or money but due to friendly relations with the family of the deceased for purposes of facilitating him to attend some marriage ceremony. The finding on the question of negligence has also been questioned.

5. Having heard the submissions and having gone through the Tribunal's record, this court finds that the reasons set out by the Tribunal to hold the drivers of both the vehicles guilty of contributory negligence do not deserve to be disturbed or interfered with. It is clear from the evidence of PW-2, an eye witness, that while the ambulance was moving at an excessive speed in a zigzag manner, the accident had occurred in the middle of the road, it being a case of head-on collision, the driver of Tata Sumo also being responsible for the mishap, he having used excessive speed. The injuries suffered by the first appellant cannot be a good defence.

6. PW-1, during his cross-examination, had conceded that Tata Sumo had been taken on hire for the journey during which the accident occurred. No effort was made by the appellants to challenge the said testimony by any evidence or rebuttal. In these circumstances, the finding that the insurance policy (Ex. R6W1/3) would not cover the risk of use of the vehicle for hire or reward also does not call for any interference.

7. The appeal is, thus, devoid of substance and is dismissed. The pending applications also stand dismissed.

R.K.GAUBA, J.

AUGUST 02, 2017

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