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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04th January, 2017

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MAC.APP. 433/2008

UNITED INDIA INSURANCE CO.LTD. Appellant

Through: Mr. L.K. Tyagi, Adv.

versus

BRAHAM CHAND & ORS

..... Respondents

Through: Mr. Naresh Kumar Garg,
Deputy Manager of SBI, Tis
Hazari Branch.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.3,60,000/- has been awarded to respondents No.1 and 2.
2. The accident dated 29th July, 2005 resulted in the death of Shyam Lal. The deceased was aged 21 years at the time of the accident and was working as a conductor earning Rs.5,000/- per month. The Claims Tribunal took the minimum wages of Rs.3,100/- per month, added 50% towards inflation, deducted 1/3rd towards personal expenses and applied the multiplier of 11 to compute the loss of dependency as Rs.3,10,000/-. The Claims Tribunal awarded 40,000/- towards loss of love and affection and Rs.10,000/- towards

funeral expenses. The total compensation awarded by the Claims Tribunal is Rs.3,60,000/-.

3. Learned counsel for the appellant urged at the time of the hearing that the addition of 50% towards inflation be set aside. It is further submitted that the deceased was travelling in truck bearing No. HR 38J 3744 which hit against the stationary truck bearing No. HR 38A 8729. It is submitted that the negligence of the stationary truck bearing No. HR 38A 8729 was more than 50% and, therefore, the appellant be granted recovery rights to recover the award amount from the insurance company of truck bearing No. HR 38A 8729 to the extent of the composite negligence.

4. With respect to the quantum of compensation awarded by the Claims Tribunal, this Court is of the view that there is no infirmity in the addition of 50% of minimum wages towards inflation. The compensation awarded by the Claims Tribunal is just, fair and reasonable and it does not warrant any interference. However, there is merit in the second contention urged by the learned counsel for the appellant that the driver of the stationary truck cannot be held to be negligent to the extent of more than 50%. Since the truck insured by the appellant was stationary parked in the middle of the road without any indication or light, the negligence of the truck insured by the appellant is held to be 50%.

5. The appeal is allowed and the recovery rights are granted to the appellant to recover 50% of the award amount from respondents No.5 and 6. Since respondent No.7 had validly insured truck bearing No.HR 38J 3744, the respondent No.7 would be liable to pay 50% of

the award amount to the appellant.

6. The appellant has deposited the entire award amount with the Claims Tribunal in terms of the order dated 12th August, 2008 out of which the entire amount has been released except one FDR for Rs.1,03,064/- in the name of respondent No.2, Leela Devi.

7. Mr. Naresh Chand Garg, Deputy Manager of State Bank of India, Tis Hazari Courts Branch is present in Court and has handed over the status report in respect of the FDRs. As per the said report, FDR No.30869128475 in the name of Leela Devi (respondent No.2) is valid upto 26th August, 2009 and the monthly interest on the said FDR is being paid on quarterly basis to Leela Devi in the joint savings bank account No.30859013033 with State Bank of India, Baldwara Branch, Village and Post Office Baldwara, Distt. Mandi, Himachal Pradesh. It is further submitted that Leela Devi has approached the Bank for the discharge of the FDR. The status report is taken on record. As per the Aadhar Card, the address of Leela Devi is as under:-

“Tehsil Sarkaghat,
Bahnoo(513),Bahnu, Mandi,
Himachal Pradesh-175033”

8. The State Bank of India, Tis Hazari Courts Branch is permitted to pre maturely discharge the FDR and release the FDR amount of respondent No.2.

9. The statutory amount be refunded back to the appellant.

10. Copy of this judgment be sent to the respondents No.1 and 2 at the address given above.

11. Copy of this judgment be given *dasti* under signature of Court Master to the learned counsel for the parties as well as to State Bank of India, Tis Hazari Courts Branch.

JANUARY 04, 2017/ak

J.R. MIDHA, J.

