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

Decided on: 25th July, 2017

+ **MAC APPEAL No.427/2009**

SMT. SUNITA & ORS. Appellants

Through: Mr. A.K. Soni for Mr. Sameer
Nandwani, Adv.

versus

SH. SUMIT DIWAN & ORS. Respondents

Through: Ms. Harsh Lata for Ms. Shantha
Devi Raman, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants had instituted accident claim case (799/2008) on 09.12.2006 on account of death of Kamal Kumar in a motor vehicular accident involving Maruti Car bearing registration no. DL 2CN 7666, it admittedly insured against third party risk with the third respondent (insurer) for the period in question. The appellants had initially invoked Section 166 of Motor Vehicles Act, 1988 to seek compensation on the principle of fault liability. But, on their application the claim petition, was converted into one based on structured formula on the principle of no fault liability under Section 163-A of Motor Vehicles Act, 1988. It led to judgment dated 28.02.2009 whereby compensation was awarded in the total sum of Rs. 4,99,000/-, the liability being fastened on the insurer. The claimant stated that the income of her deceased husband was about

Rs.40,000/- per annum he being self-employed. Having regard to the fact that no contrary evidence was brought on record by the respondents, the tribunal accepted the same. In terms of second schedule appended to Motor Vehicles Act, 1988, deduction of 1/3rd towards personal expenses was made and the multiplier of 17 applied to arrive at the compensation payable towards loss of dependency.

2. By the appeal at hand, the grievance raised is that since some evidence had been led to show negligence, the claim should have been decided under the fault liability principle under Section 166 of Motor Vehicles Act. It is also the grievance that the assessment at Rs. 40,000/- per annum towards earnings was incorrect.

3. Having heard the learned counsel on both sides, and having gone through the record, this Court finds no substance in the appeal. The claimants had taken a conscious decision to apply for conversion of the case from one under Section 166 of Motor Vehicles Act, to one under Section 163-A of Motor Vehicles, 1988. Having secured an award accordingly, they cannot be allowed to make an about-turn and now have the claim proceedings re-opened. It is noted that the award under the non-pecuniary damages is higher than permissible by law. But, since the respondents did not bring in any challenge, this court refrains from making any interference on this account.

4. The appeal is devoid of substance and is dismissed.

R.K.GAUBA, J.

JULY 25, 2017/nk