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

Decided on: 18th August, 2017

+ MAC.APP. 531/2009

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Shoumik Mazumdar, Advocate

versus

SMT. ASHU BHAGAT & ORS Respondents

Through: Nemo.

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

JUDGMENT (ORAL)

1. By judgment dated 16.07.2009, accident claim case (Suit No.97/2008) instituted by the first respondent (collectively) on account of death of Ajay Bhagat in a motor vehicular accident that had occurred on 18.08.2006, compensation in the sum of Rs.29,76,000/- was awarded with interest in their favour, the liability having been fastened against the appellant insurance company, it admittedly being the insurer of third party risk in respect of bus bearing registration No. DL-1PB-0976 which was involved.

2. The appeal at hand was filed primarily raising two contentions; one, that the net income of the deceased, a railway employee was Rs.9838/- per month and that the tribunal had fallen into error by

taking the gross emoluments shown by the salary certificate so proved, and the second, that the first claimant (widow) has been given government employment on compassionate grounds which should have been factored in.

3. The appeal must fail on both counts.

4. There is no reason why the net income should be taken as loss of dependency. The tribunal has correctly included all permissible allowances while calculating the loss of dependency. The appointment of the first claimant on compassionate grounds is of no consequence. She would be earning salary and allowances against such employment for services rendered by her which cannot be deducted against the compensation payable under the tort liability.

5. The appeal is dismissed.

6. By order dated 03.11.2009, the insurance company had been directed to deposit the entire awarded amount with interest with UCO Bank, Delhi High Court Branch, New Delhi. Directions for release of the said amount were given by order dated 18.12.2009. Thus, no further directions are called for.

7. The statutory amount shall be refunded.

R.K.GAUBA, J.

AUGUST 18, 2017

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