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

Decided on: 24th August, 2017

+ **MAC APPEAL NO.598/2009 & CM 17736/2009**

MURTI DEVI & ORS. Appellant

Through: None

versus

HARUN KHAN & ORS. Respondents

Through: Mr. J.P.N. Shahi and Mr.
Komal Dhingra, Advocates for
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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Harish Kumar Yadav, then 36 years old, employed as a driver with the office of the Joint Director (Agriculture) of the Development Department of Govt. of NCT of Delhi, suffered injuries and died in the consequence in a motor vehicular accident that occurred on 09.02.1998 at about 9.30 p.m., involving collision of two vehicles one being Toyota Tempo bearing registration no.DL-1L-1731 (Tempo) and the other being truck bearing registration no.HR-38A-4945 (truck), in the area of PAI Farm House, within the jurisdiction of police station Vasant Kunj. The deceased was the driver of the tempo while the truck in question was driven by the first respondent, it being admittedly insured against third party risk with the third respondent (insurer) for the period in question. The widow and other members

of the family depending on the deceased, they being the appellants herein, instituted accident claim case (petition no.842/2008) on 27.05.1998 seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 20.05.2009, returned a finding that the accident had occurred due to the negligence on the part of both the deceased and the truck driver, holding them equally responsible. It computed the compensation in the total sum of Rs.9,82,040/- but on the basis of finding to above effect directed the insurer of the truck to pay half of the above said amount as compensation to the claimants.

3. The appeal was filed questioning the finding of contributory negligence and the computation of compensation. As per order dated 23.07.2013, the appeal was put in the category of regulars. When the appeal is taken up for hearing, there is no appearance for the claimants / appellants. The learned counsel for the insurer has been heard and with his assistance record perused.

4. In the opinion of this court, the finding of contributory negligence on the part of the deceased was wholly uncalled for, unjust and unfair. In fact, that was nobody's case during the inquiry. This was not even put as a defence to the eye witness Dr. Nagender Yadav (PW-4) during his cross-examination. The tribunal has observed that it was a case of head-on collision. It is not understood as to what was the basis for such assumption. PW-4 had instead spoken of the truck hitting against the tempo on the corner of the driver side. Even if it was assumed, that there was a head-on collision, that by itself would not mean that the tribunal could jump to

the conclusion that both the drivers were equally responsible. To hold the deceased also accountable for the accident, it had to be found out, from the evidence that he was in the wrong lane or moving in wrong direction. No such material having been brought out, the conclusions to the above effect and the finding of contributory negligence are unfounded and, therefore, set aside. It is held that the claimants are entitled to the entire compensation to be paid without any deduction.

5. The appeal, however, also raises the issue of computation of loss of dependency stating that the colleague of the deceased was earning much higher wages in July 2007. The wages earned by some other person in later years cannot become the benchmark. The tribunal has accepted the evidence led by the claimants on the basis of pay certificate (Ex. PW1/3), added the component of future prospects of increase and applied the correct multiplier to grant the award. There is no merit in the contentions urged in the appeal about the computation.

6. The appeal is, thus, partly allowed. It is directed that the insurer is obliged to pay the entire amount of Rs.9,82,040/- (Rupees Nine Lakhs Eighty Two Thousand and Forty Only) as determined by the tribunal to the claimant.

7. The insurance company shall deposit the balance of its liability in terms of the modification ordered above, by making an appropriate deposit with the tribunal within thirty (30) days failing which it shall be liable to pay interest at the rate of nine per cent (9%) per annum. thereupon. Upon the deposit being made, the tribunal shall release

the amount in terms of the dispensation in the impugned judgment to the claimants.

8. The appeal and the pending application are disposed of in above terms.

AUGUST 24, 2017

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R.K.GAUBA, J.

