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

Decided on: 11th September, 2017

+ MAC.APP. 121/2010

MANTI DEVI & ANR. Appellants

Through: Mr. D.B. Yadav, Adv.

versus

MOHD. AJAM & ORS. Respondents

Through: Ms. Neerja Sachdeva, Adv. for
R-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Jagdish Kumar was driving a motor vehicle described as TATA 407 Tempo bearing registration no. DL 1LG 5143 on 09.10.2007 on road towards Burari from the side of Wazirabad, when at about 4.15 a.m., it came to be involved in a collision against truck bearing registration no. DL 1LE 9643, and as a result of injuries suffered in the consequence he died. Accident claim case (petition no. 373/2007) was instituted by his parents, now the appellants, on 28.11.2007

seeking compensation impleading, amongst others, the driver, owner and insurer of the two vehicles, invoking Section 166 of the Motor Vehicles Act, 1988, attributing negligence on the part of driving of truck bearing registration no. DL 1LE 9643. Evidence was led during the inquiry in the course of which ASI Shiv Kumar (PW-4), the investigating police officer of FIR No. 538/2007, which had been registered by the police, was examined. The evidence of the said PW-4 the solitary witness having a bearing on the question of negligence, however, would not evince any proof of negligence on the part of driver of the afore-mentioned truck. It is on the basis of conclusions to such effect drawn by the tribunal that by judgment dated 07.07.2009 it dismissed the claim petition declining to grant any compensation.

2. Though the appeal at hand was filed questioning the above finding returned by the tribunal, at the hearing, the counsel for the claimants, submitted that the claim petition may be treated as one based on claim for compensation under the structured formula on principle of no-fault liability under Section 163 A of Motor Vehicles Act, 1988. On being asked, the counsel appearing for the insurer submitted that she would leave the matter to the discretion of the court.

3. In the foregoing facts and circumstances, when the claimants are unable to muster any evidence to establish the guilt on the part of the driver of the truck, their prayer for the claim to be treated as one founded on no-fault liability deserves to be accepted so that they are not totally deprived of any compensation.

4. Thus, the prayer is accepted. The impugned judgment is set aside. The claim proceedings before the tribunal are revived. It shall be treated as a claim brought under the structured formula on no-fault liability basis under section 163A of Motor Vehicles Act, 1988. The tribunal is directed to proceed further with the necessary inquiry and adjudicate afresh, uninfluenced by the decision rendered by it earlier.

5. The parties are directed to appear before the tribunal on 24th October, 2017.

6. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 11, 2017

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