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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 04th July, 2017

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MAC.APP. 919/2014 and CM No.17180/2017

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. J.P.N. Shahi, Advocate

versus

BINDESHWARI DEVI & ORS Respondents
Through: Mr. Aditya Kr. Chaudhary,
Advocates for R-1 to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

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JUDGMENT (ORAL)

1. A collision took place in the wee hours of 26.02.2011 at G.T. Road near Shani Temple, Village Barhi, PS Gannaur, District Sonapat, Haryana between two vehicles one being Canter (LMV) bearing no.DL-1LK-0895 (Canter) and the other a truck bearing no.PB-08-BC 9680 (truck), it resulting in death of Vinay Kumar Choudhary (driver of the Canter). His legal heirs (respondent nos.1 to 4 herein) took out an accident claim case (petition no.149/2013) before the Motor Accident Claims Tribunal (Tribunal), impleading the driver and owner of the Canter (5th and 6th respondents herein respectively), and its insurer (the appellant), as parties, in addition to Vipin Bhatia, the registered owner of the Canter (and employer of the deceased) as additional respondent, seeking compensation primarily on the ground

that the accident had occurred due to negligence on the part of the driver and the truck it having been parked in the middle of the road in a careless manner without any caution sign. The Tribunal on the basis of evidence led during inquiry, upheld the contention of the claimants about negligence and thus, granted compensation calculating it in the sum of Rs.18,23,000/- with interest at the rate of 9% p.a. directing the appellant insurance company to pay.

2. The insurance company, by the appeal at hand, seeks to assail the judgment of the tribunal on two counts, one on the finding of negligence, its contention being that the deceased was also guilty of contributory negligence in that his vehicle had rammed into the truck from behind, the second submission concerning the addition of the element of future prospects of increase in the income for calculating the loss of dependency.

3. Having heard the learned counsel for both sides and having gone through the tribunal's record, this court is of the view that the appellant must fail on both counts.

4. The evidence led before the tribunal included the testimony of Vipin Bhatia (PW-2), the owner of the Canter and employer of the deceased person. A copy of the chargesheet which was submitted on conclusion of investigation into the corresponding FIR (Ex. PW1/C) reveals that PW-2 had reached the scene of accident after the event. His evidence clearly shows that he had found the two vehicles having collided into each other in the middle of the road and it is his version to such effect which led to the registration of the corresponding

criminal case. It is clear from his testimony and the other material on record including the site plan prepared by the investigating police officer that the truck was parked in the middle of the road in the dead of night with no caution sign. Even if there was a break down of the vehicle, the Motor Vehicles' Rules required some caution sign to be put in position. Since the driver of the truck did not take any such steps, it is very clear that it is on account of his negligence that the collision took place.

5. The view taken in *Raj Rani & Ors. Vs. Oriental Insurance Company Ltd. and Ors.*, (2009) 13 SCC 654, does not assist the cause of the appellant. Each case has to be seen on its own merits. It may be that the driver of the Canter (deceased) may have noticed the truck in the middle of the road but given the fact that it was a highway on which he was moving with no caution sign, in all probability, by the time he realized that the vehicle was not mobile, it would have been too late for him to react and check or divert his vehicle to avoid collision. In these circumstances, this court is not impressed with the plea of contributory negligence.

6. Coming to the other contention, the prime reason why the appellant takes exception to the addition of future prospects is that the employer (PW-2) would not show any documentary proof regarding employment of the deceased. PW-2 had deposed on oath that the deceased was his employer for the last 4-5 years, his current salary being Rs.10,000/-. The fact that the deceased had been in such employment for such a long period, the fact that he was 40 years old at

the relevant point of time and the fact that he was a professional driver collectively show that he was in regular employment of PW-2, a transporter by avocation. Given the fact that it was a regular employment, the element of future prospects will have to be factored in.

7. The appeal, therefore, is devoid of substance and is dismissed. The pending application also stands disposed of.

8. In terms of order dated 13.10.2014, the appellant would have deposited the entire awarded amount with accumulated interest, out of which, 50% was allowed to be released to the claimant. The balance amount alongwith interest shall also now be released by the Registrar General to the claimants in terms of the amount awarded.

9. The statutory deposit shall be refunded.

R.K.GAUBA, J.

JULY 04, 2017

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