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

Decided on: 9th August, 2017

+ MAC.APP. 1042/2014 and CM APPL.18784/2014

ACTION CONSTRUCTION EQUIPMENT LTD..... Appellant

Through: Mr. P. Acharya, Advocate for
Mr. Sameer Nandwani,
Advocate

versus

NEELAM DEVI & ORS (IFFCO TOKIO GENERAL
INSURANCE CO. LTD.) Respondents

Through: Mr. Varun Sarin, Adv. for R-7.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant is the owner of tractor bearing registration No.HR-30E-9891 (the tractor) which was involved in a motor vehicular accident near Petrol Pump, NH-11 that occurred at about 11:00 p.m. on 03.05.2010 resulting in death of Nand Lal @ Nandu, one of the persons travelling in the trolley attached thereto. First to fifth respondent (collectively, the claimants) are members of the family who were dependent on the deceased Nand Lal @ Nandu. They instituted accident claim case (Suit No.118/2014) on 23.12.2010, impleading the driver of the tractor (sixth respondent), the appellant and the seventh respondent herein (it being the insurer) as party

respondents, seeking compensation on the averments that the accident had occurred due to negligence on the part of the tractor driver.

2. While contesting the said claim proceedings, the insurer set up the plea of breach of terms and conditions of the insurance policy on the ground that the driver did not hold a valid driving licence and that the deceased was a gratuitous passenger travelling in the trolley, his risk not being covered by the insurance policy taken out in respect of the tractor only.

3. The tribunal upheld the plea of the insurer and thus exonerated it. It awarded compensation in the sum of Rs.11,97,000/- and called upon the appellant and the driver to pay, they having been held jointly and severally liable, the said amount with interest to the claimants.

4. The present appeal was filed by the registered owner of the tractor questioning the award and also the exoneration of the insurer.

5. In terms of the interim directions given by order dated 17.11.2014, the appellant deposited Rs.2 lacs, which was the condition for stay against the recovery. In terms of further directions, he deposited the balance amount payable as compensation as well, the awarded compensation having been released to the claimants in terms of the detailed directions issued by order dated 01.09.2016 read with order dated 06.10.2016.

6. By order dated 12.05.2017, the learned Single Judge of this court then in *seisin* of the case held that the amount awarded by the claims tribunal to the claimants (first to fifth respondents) was just,

fair and reasonable and did not warrant any interference thereby dismissing the appeal in so far as it was directed against the said parties.

7. The only issue which survives in the appeal thus concerns exoneration of the insurer.

8. Even if the contention of the appellant that the driver was not disqualified from holding a driving licence for the reason that the evidence shows him to be in possession of a valid learner's licence for some earlier period is accepted, the other ground of the deceased being a gratuitous passenger set out by the tribunal as additional reason for exoneration of the insurer cannot be wished away. Noticeably, there was no explanation offered for the presence of the deceased as a passenger in the trolley during the inquiry.

9. Thus, the appeal is found devoid of substance and is dismissed.

10. Since the awarded compensation has already been deposited and has been paid to the claimants, the statutory deposit shall be refunded to the appellant.

11. The appeal as well as pending application stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 09, 2017

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