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

+ **MAC.APP. 495/2017 & CM Nos. 20206-08/2017**

NATIONAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Pankaj Seth and Mr. Shomik
Mazumdar, Advocates.

Versus

BALWINDER KAUR & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **29.05.2017**

CM No.20207/2017 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed off.

MAC.APP. 495/2017 & CM Nos. 20206 & 20208/2017

1. The appellant has impugned the Award dated 07.02.2017 on the ground that a compensation of Rs.57,13,640/- along with interest at the rate of 9% per annum has been granted to the kin of the deceased but without considering the contributory negligence on the part of the deceased. The Tribunal recorded the facts as under:-

“9. In the cross-examination he stated that there were 5-7 vehicles including motorcycle, cars, truck etc. on the road at the time of accident. He also stated that he had not made any call at 100 number and after the accident police did not meet him. On the very same day. He further stated that after the accident both vehicles were lying on the extreme left side of

road. He denied the suggestion that at the time of accident the offending vehicle was parked on the extreme left side and its parking lights were on. Thereafter he voluntarily stated that the offending vehicle was running at the time of accident and when the truck overtook one car, he noticed that there is another vehicle in front of his truck and he suddenly applied brakes. He also denied the suggestion that the truck was to enter in the colony and therefore he was waiting at the gate for opening. He further denied the suggestion that the accident took place due to negligence of deceased since he dashed his scooter from behind in the offending vehicle. He also stated that he does not know the petitioner before this accident.

10. It is argued on behalf of respondent insurance company that the present claim petition is not maintainable since the deceased had hit the offending vehicle from behind and the accident occurred due to negligence of deceased himself. Here it be noted that the police has filed DAR in the matter after detailed investigation and alongwith DAR police has filed copy of final report as per which R-1 has been charged sheeted for offences under Section 279/304A IPC. During the course of investigation the police has recorded statement of one Sh.Sanjay who has stated that the accident had taken place due to sudden applying of brakes by R-1. The petitioner has filed the copy of supplementary charge sheet filed by the police in the court of Ld.MM wherein PW3 who is a public witness has been shown as an eyewitness of the accident. The petitioner has also examined the said witness who has categorically and confidently deposed about the manner of accident and that the accident had taken place on account of negligence of R-1.

11. As per arrest memo R-1 was arrested in the present case. Though it has been pleaded on behalf of respondents that the accident had taken place on account of negligence of deceased himself but they have not adduced any evidence to the contrary. Though as per version of parties the deceased had hit the offending vehicle-from behind but only the hitting

from behind will not prove the negligence on the part of deceased unless the same is to be proved by cogent evidence. Though it has also been pleaded on behalf of respondents that the offending vehicle was stationed at the time of accident but it has not been proved by cogent evidence that the deceased was negligent and R-1 applied due care and caution but on account of any negligence of deceased, accident could not be avoided.

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19. In this petition also the petitioners have, proved the negligence on the part of R-1 vide copies of criminal record filed alongwith the DAR by the police and the deposition of the public eyewitness PW3 who has clearly deposed on the point of negligence on the part of driver of offending vehicle. The death of the deceased has been proved vide copy of postmortem report.”

2. What emanates from the aforesaid facts and reasoning is that there was a sheer negligence of the driver of the offending vehicle, who was apparently driving the vehicle without any care or concern for the safety of the other road users. The contention of the appellant that some contributory negligence should have been attributed on the part of the deceased who while riding his scooty crashed into the offending vehicle, is untenable because the deceased is no more to tell his part of story and apportioning any contributory liability on him would be unfair and unwarranted especially because the rash and negligent driving of the offending vehicle has been established. Any assumption, contrary to the facts and evidence that the fatal injuries to the deceased were the result of the mindless manner in which the offending vehicle was being driven, would be speculative and unjustified.

3. The other argument is apropos the grant of Rs.2,00,000/- for loss of

love and affection to the kin of the deceased. The Court does not find this on the higher side. One cannot value the quality of these human emotions, nor hold a particular figure as granted in past cases as the accepted figure or as a past precedent. The previous amounts of Rs.1,00,000/- under this non-pecuniary head – is at best indicative and not mandatorily limiting. The amount awarded in this case is just. Accordingly, this contention too is rejected.

4. Lastly, it is argued that the deductions of allowances which were personal in nature have not been made, however, the appeal does not specify which deductions were not made, hence this contention being unsubstantiated and vague, is rejected.

5. In view of the foregoing, the Court does not find any merit in the appeal, it is dismissed. The pending applications also stands dismissed. The statutory deposit be refunded to the appellant.

NAJMI WAZIRI, J.

MAY 29, 2017

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