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

Decided on: 26th July, 2017

+ MAC.APP. 873/2016 and CM APPL.38953/2016

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION (UPSRTC) Appellant

Through: Mr. Aly Mirza, Advocate

versus

PRATAP SINGH & ORS Respondents

Through: Mr. Sudhir Nagar, Advocate
with Mr. Mohit Singh,
Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ram Niwas, riding motorcycle bearing registration No.UP-13M-2270, suffered injuries in a motor vehicular accident that occurred on 30.10.2013, in the area of village Kote, Dadri, G.T. Road, U.P., allegedly on account of negligent driving of bus bearing registration No.UP-16P-9142 of the appellant. His parents and wife, first to third respondents (for short, the claimants), instituted accident claim case (MAC Petition No.242/13) on 16.11.2013, which resulted in inquiry leading to judgment dated 17.08.2016 whereby a finding was returned that the accident occurred due to negligent driving of the

bus by fourth respondent, the driver engaged by the appellant. The tribunal awarded compensation in the total sum of Rs.9,98,800/- with interest @ 12% per annum directing the appellant to pay.

2. The appeal is pressed on the grounds that negligence was not strictly proved in that the witness Harender (PW-2), who was examined, his testimony described as eye witness account, could not have been present at the scene in view of the record of investigation of the case registered by the police and further that the computation of the compensation was erroneous for the reason the multiplier should have been adopted according to the age of the parents because the wife (the third respondent) had re-married, a fact admitted by the first respondent during the course of his testimony, besides the rate of interest levied being excessive.

3. After some hearing, the learned counsel for the claimants conceded that further evidence was required to prove the involvement and negligence of the bus in that in the record of investigation of the corresponding police case, an eye witness named Ajab Singh was available and the circumstances noticed during investigation could have also been adduced through the testimony of the investigating officer or other witnesses relating to the police investigation.

4. On the basis of these submissions, the learned counsel for the claimants submits that the appeal may be allowed but he requested that the case may be remitted to the tribunal reserving the contentions of both sides on the issues raised in the appeal for further inquiry and fresh adjudication.

5. Ordered accordingly.
6. The impugned judgment is set aside. The claim case is remitted to the tribunal for further inquiry in which the claimants will be given opportunity to lead further evidence which would, of course, be followed by an opportunity to the contesting respondents to lead evidence in rebuttal, if any. The tribunal shall take fresh decision uninfluenced by the view taken in the judgment earlier passed. The contentions concerning the computation of compensation, as urged by the appellant herein, will also be considered by the tribunal.
7. For clarity, it is directed that the tribunal will now be obliged to adjudicate only on the issue of negligence and computation of compensation which is to be awarded in the present case, in the event of the first said issue being decided in favour of the claimants.
8. The parties shall appear before the tribunal on 25th August, 2017.
9. The amount deposited by the appellant in terms of order dated 21.10.2016 shall be presented refunded with statutory amount deposited earlier.
10. Given the fact that the case is old, the tribunal shall make all endeavor to take the fresh decision as expeditiously as possible.
11. The appeal is disposed of in above terms.
12. Pending application also stands disposed of.

13. *Dasti* to the parties.

R.K.GAUBA, J.

JULY 26, 2017

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