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

Decided on: 1st November, 2017

+ MAC.APP. 560/2015 and CM 12748/2017

VINITA SHARMA & ANR Appellants

Through: Mr. S.N. Parashar and Ms. Pankaj
Kumari, Advocates

versus

BHAGWAN DASS & ORS Respondents

Through: Mr. Vikas Chhabra and Mr.
Satender Sigh, Adv. for R-1 & 3
Mr. Krish Kalra, Advocate for R-2

+ MAC.APP. 239/2016 and CM 13177/2017

BHAGWAN DASS & ANR Appellants

Through: Mr. Vikas Chhabra and Mr.
Satender Sigh, Advocates

versus

VINITA SHARMA & ORS Respondents

Through: Mr. S.N. Parashar and Ms. Pankaj
Kumari, Advocates for R-1 & 2
Mr. Krish Kalra, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By judgment dated 01.04.2015 in accident claim case (suit no.458/2014) instituted on 09.05.2014 by the parents of the deceased Akshay Vats, they being the appellants in MACA 560/2015

(collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal) held inquiry taking into account the version also of the party respondents, they including Bhagwan Dass and M/s. K.M. Tooling Solutions Ltd. (appellants in MACA 239/2016), they concededly being the driver and the entity in control of car bearing registration no.DL-2CZ-7151 (car), the case of the claimants being that a motor vehicular accident had been caused due to its negligent driving by the said Bhagwan Dass (driver) resulting in Akshay Vats (riding at the relevant point of time 11.15 p.m. on 31.12.2013 on scooty bearing registration no.DL-10S-7601) dying in the consequence of injuries suffered. It ought to be mentioned here that the car was admittedly registered at the relevant point of time in the name of M/s. H.R. Electronics which was also a party respondent before the tribunal but since M/s. K.M. Tooling Solutions Ltd. had conceded that it was the entity in control of the vehicle, no liability was fastened against the registered owner of the said vehicle.

2. The tribunal returned a finding that the accident had occurred due to the negligence both on the part of the deceased Akshay Vats and the driver of the car, apportioning the liability in that regard equally amongst them. The tribunal determined compensation in the total sum of Rs.20,23,000/- and fastened the liability on the appellants in MACA 239/2016 to pay 50% of the said amount with interest.

3. Both appeals have been filed questioning the correctness of the conclusions reached by the tribunal in the impugned judgment. It may be mentioned here that the foremost contention of the appellant in MACA 239/2016 is that there was no evidence led from which the

tribunal could deduce any negligence on the part of Bhagwan Dass (car driver), the evidence led by the respondents, as per the submissions, having gone unchallenged.

4. After some hearing, the learned counsel representing the claimants fairly conceded that as per the police investigation in the corresponding case, an eye-witness was available and could have been examined. He thus submitted that while the impugned judgment may be set aside, the claimants be given opportunity to lead additional evidence before the tribunal by having summoned the eye-witness as also the investigating police officer to testify so that the circumstances surrounding the accident can also be properly brought out.

5. In the facts and circumstances noted above, the request of the claimants is found to be just and proper. Thus, the impugned judgment is set aside. The claimants' case is remitted to the tribunal for further inquiry in the course of which the claimants will be given opportunity to lead additional evidence which will be followed by similar opportunity to the contesting respondents to lead evidence in rebuttal, if any. The contentions of both sides on all issues are kept open.

6. The parties are directed to appear before the tribunal on 30.11.2017.

7. By order dated 16.11.2015 on CM 26602/2015 in MACA 560/2015, the third respondent of the said appeal, M/s. K.M. Tooling Solutions Ltd., had been directed to deposit the awarded amount within the period specified and from out of such deposit, fifty percent (50%) was permitted to be released to the claimants subject to they

furnishing an undertaking to the effect that in the event of the appeal being decided against them, they would return the said money on such terms and conditions as the court may fix at that point of time. Since the inquiry into the claim case has been remanded, the balance lying in deposit shall be presently refunded to the party which made the deposit. The amount received by the claimants shall be liable to be adjusted or subject to such direction as are deemed proper by the tribunal at the time of fresh adjudication.

8. The appeals and the pending applications are disposed of in above terms.

NOVEMBER 01, 2017

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R.K.GAUBA, J.



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