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

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Decided on: 28.08.2019

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MAC.APP. 549/2015

RAKESH PASSI & ANR.

..... Appellants

Through: Mr. D. K. Sharma, Advocate.

Versus

**HAWA SINGH & ORS (BAJAJ ALLIANZ GENERAL
INSURANCE CO LTD)**

..... Respondents

Through: Mr. Pankaj Gupta, Advocate for
Ms. Suman Bagga, Advocate for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 08.04.2015 passed by the learned MACT in MAC. Petition No. 264/2008 on three grounds. Firstly, that the multiplier has been wrongly applied; the age of the deceased was 29 years, therefore, the multiplier of 17 ought to have been applied instead of 5. Secondly, while computing the compensation under the head of 'loss of dependency', 40% should have been added towards 'loss of future prospects'. Lastly, the appellant submits that 50% contributory negligence apportioned upon the deceased is on the higher side, specially because the offending truck had stopped in the middle of the busy road, as

has been recorded by the learned MACT in para 17 of the impugned order. It is contended that because the offending vehicle stopped suddenly in the fast moving traffic, the deceased possibly had hardly sufficient occasion to avert the accident; nevertheless he perhaps did attempt to avert the disastrous accident by turning the car to the left side and in that he may have gone to the left side of the road, which was meant for the heavy vehicles.

2. The learned MACT has recorded as under:-

“17.....This Tribunal from facts and circumstances, concludes that the accident had taken place due to application of sudden brakes by the offending truck going at high speed, in the middle of the road, thus resulting in the collision with the Octavia Car coming from behind.”

3. Mr. Pankaj Gupta, the learned counsel for respondent – insurance company submits that the photographs itself would show that the Octavia Car was being driven at a very high speed, which is why the entire front portion of the car, till its roof has been crushed.

4. The Court has seen the photographs of the accident. The extent of damage to the car shows that the impact of the car into the truck ahead was at a rather high and uncontrollable speed.

5. The Octavia Car ought to have been driven at a controllable speed with adequate distance from the vehicle ahead so as to avoid any accident which may occur because of sudden stoppage of the vehicle ahead. However, the accident happened within the city on a busy road where the vehicles move almost bumper to bumper and on some stretches the speed is much more. The stoppage of a heavy vehicle like a truck in the middle of

the road, suddenly and without warning, is quite likely to result in a cascading effect on the traffic behind it. The cause for the accident is clearly the stoppage of the offending truck.

6. In the circumstances, the contributory negligence apportioned upon the deceased is reduced to 35%.

7. Let a fresh computation be made by the insurance company within four weeks of receipt of copy of this order and the requisite amounts, alongwith interest accrued thereon, be deposited before the learned MACT for disbursement to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.

8. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, be refunded to the insurance company.

9. The appeal stands disposed-off in terms of the above.

NAJMI WAZIRI, J.

AUGUST 28, 2019

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