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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 27^h January, 2020**

+ MAC.APP. 964/2017

NAZIRA & ORS Appellants

Through: Mr.O.P. Mannie, Adv.

versus

SAFIQ & ORS Respondents

Through: Mr.Nazma Akhtar, Adv. for R-1.
Mr.A.K. Soni, Adv. with Mr.Pavan
Kumar, Adv. for R-3/ICICI Lombard.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellants have challenged the Award dated 3rd August, 2017 of the Claims Tribunal whereby their claim petition was dismissed.
2. On 17th July, 2012 at about 4:00 AM, Late Mohammad Hussain was travelling in bus no.UP-22T-2086 which met with an accident in which the head of the deceased was hit by a truck coming from the opposite direction which resulted in his death on the spot.
3. The police registered FIR No.69 of 2012 under Sections 279/304-A of the Indian Penal Code at Police Station Bania Dhar, District Bheen Nagar, Uttar Pradesh, which resulted into chargesheet against the driver of the bus.
4. The Claims Tribunal held that the appellants have not proved the rash and negligent driving of the driver.
5. Learned counsel for the appellants submits that the appellants placed on record certified copies of all the documents relating to the criminal case. It is further submitted that the Claims Tribunal vide order dated 1st September, 2012 directed the Investigating Officer of FIR No.225/12 to

produce the entire record of the criminal case. It is further submitted that the father and the younger brother of the deceased appeared in the witness box as PW- 2 and PW - 3 but the Claims Tribunal disbelieved them without any basis. It is further submitted that if the Claims Tribunal had any doubt on the veracity of PW- 2 and PW - 3, the Claims Tribunal could have examined the Investigating Officer which was not done.

6. There is merit in the contentions raised by the learned counsel for the appellants. The proceedings before the Claims Tribunal are in the nature of an inquiry which is different from trial. Reference is made to **Mayur Arora v. Amit**, 2011 (1) TAC 878, in which this Court held that the Inquiry contemplated in Section 168 of the Motor Vehicles Act, 1988 is different from a trial. This Court laid down the principles applicable to an Inquiry under Sections 168 and 169 of the Motor Vehicles Act. The relevant portions of the judgment are as under:-

“10. THE ‘INQUIRY’ CONTEMPLATED UNDER SECTION 168 of MOTOR VEHICLES ACT, 1988

10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road

accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record”

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“13.1. On a fair reading of the statute, the wide power given to the Tribunal, the absence of “onus” upon the claimant, the general position of the claimants and their wherewithal with the social obligation of the welfare State, all indicate that the procedure of the Claims Tribunal has to be Inquisitorial though keeping in view that most other procedures in the country are Adversarial, it would be proper to conceive and put in practice something which is a mix of the two.

13.2. To explain the difference, the Claims Tribunal would not be simply passive, give both the parties sufficient opportunity to adduce evidence, and at the end of the “trial” announce who has won. At the same time, he will not assume the role of investigator and of the prosecutor apart from being the Judge in the Inquisitorial system.

13.3. Even in the pure Adversarial (where, in the past, the Judge remained passive and even in civil and criminal litigation), there has been a slow and steady move towards more active participation of the Judge. There have been two factors. The first is to do greater justice by removing imbalance between the two parties (and their lawyers); and the second is to more efficiently manage the cases and bring about efficiency.

13.4. The proceedings before the Claims Tribunal are more of an Inquiry rather than an Adversarial trial. In other words, it is not that the claimant has to allege everything which the insurance can (without bothering to ascertain the facts) deny everything and then the Court expects proof of one and every allegation made in the

claim petition.

13.5. Keeping in view the wording of the statute, the use of the phrase “hold an inquiry” as also particularly the absence of the word “trial” and; the larger purpose of the statute as demonstrated by the Statement of Objects and Reasons; observation into what has gone on; the type of the claimants; the type of the issues; and the need to bring about efficiency, procedure as are tailored to the subject has to be evolved by the Claims Tribunal.”

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“14.45. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.”

(Emphasis Supplied)

7. The appeal is allowed and the matter is remanded back to the Claims Tribunal for conducting a fresh inquiry in accordance with law. The Claims Tribunal is at liberty to summon and examine the Investigating Officer in exercise of its powers under Section 165 of the Indian Evidence Act, 1872, if considered necessary.
8. The Claims Tribunal shall expedite the matter and endeavour to decide the same within six months. The parties shall appear before the Claims Tribunal on 14th February, 2020.
9. The record of the Claims Tribunal be returned back forthwith.
10. Copy of this judgment be given *dasti* to learned counsel for the parties under signatures of Court Master.

J.R. MIDHA, J.

JANUARY 27, 2020/aa