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

+ **CM(M) 2107/2024**

JADU NANDAN AND ANR Petitioners
Through: **Mr.Shrey Chathly, Advocate.**

versus

VINITA GUPTA AND ORS Respondents
Through: **Mr.Pankaj Gupta, Advocate for**
Ms.Suman Bagga, Advocate for
R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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08.05.2024

CM APPL. 15690/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application shall stand disposed of.

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3. The petitioners, who are the parents of the deceased boy who received fatal injuries in a motor accident on 08.04.2019, had instituted a claim petition under Section 166 read with section 140 of the Motor Vehicles Act, 1988¹, and are invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, assailing the impugned order dated 21.08.2023, whereby their application under Order XXII Rule 4 of the CPC² for bringing on the record the legal representative of the deceased, namely Ajay Kumar Gupta alias Ajay Gupta, who was the driver, as well as the owner of

¹ MV Act

² Code of Civil Procedure, 1908



the offending vehicle, was dismissed *vide* impugned order dated 21.08.2023 by the learned Presiding Officer, Motor Accident Claims Tribunal, North-West District, Rohini Courts, Delhi³.

4. Having heard the learned counsel for the petitioners and the learned counsel for the respondent No.3/insurance company and on perusal of the record, at the outset, the impugned order cannot be sustained in law. Evidently, the respondent No.1 i.e. the driver-cum-owner of the offending vehicle, passed away on 02.12.2019. At the cost of repetition, the accident had occurred on 08.04.2019 and the DAR⁴ was filed by the IO⁵ on 18.12.2019, on which date, the IO had produced the LR/wife of the deceased/driver-cum-owner, namely Smt. Vinita Gupta, and the learned Tribunal *vide* order dated 16.03.2021 directed the petitioners to move an application for substitution of the LRs of the deceased/driver-cum-owner. The matter came up before the learned Tribunal on 04.04.2022, on which date, it was observed that no application had been moved for impleading the LRs of the deceased respondent No.1/driver-cum-owner, and thus, a decision was rendered that the proceedings against him/them shall stand abated automatically.

5. Indeed, it appears that there was a delay on the part of the petitioners in moving the application under Order XXII Rule 4 of the CPC and the same was moved without any application seeking condonation of delay. However, the learned counsel for the petitioners has pointed out that they had been pursuing the matter with the IO so as to obtain the details of the legal heirs, which were not forthcoming due to some inexplicable reasons assigned by the IO, and

³ Tribunal

⁴ Detailed Accident Report



as soon as the same was supplied, an application was moved on 21.08.2023.

6. Needless to point out that there was an intervening period due to the COVID-19 pandemic and there is merit in the submissions made by the learned counsel for the petitioners that if the impugned order dated 21.08.2023 is allowed to remain on the record, there might arise complications in the ongoing proceedings/trial as in the absence of the legal heirs of the registered owner, the insurer of the offending vehicle might take an objection that the entire cause of action stands abated for their liability being that of an indemnifier and thereby, frustrating their legal rights.

7. Be that as it may, to my mind, the rigorous provisions of Order XXII Rule 4 & 9 of the CPC cannot be allowed to come in the way of grant of reliefs to the petitioners under the provisions of the MV Act, which is a welfare and benevolent legislation. No prejudice is likely to be caused to the legal heirs of the deceased driver-cum-owner or for that matter, the non-applicant respondent No.3/insurance company.

8. In view of the foregoing discussion, the instant petition is allowed and the impugned order dated 04.04.2022 followed by order dated 21.08.2023, are hereby set aside. The application of the petitioners for impleading the legal heirs of the deceased driver-cum-owner stands allowed. An amended memo of parties be filed, if not already filed, and the same be placed on the record of the learned Tribunal within fifteen days from today. The learned Tribunal shall ensure that notice of the claim petition is issued to the legal heirs of the deceased/respondent No.1 and the matter shall proceed further as per law.

⁵ Investigating Officer



9. The present petition stands disposed of accordingly.

MAY 08, 2024/*sm*

DHARMESH SHARMA, J.