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

\+ MAC.APP. 328/2021, CM APPL. 45512/2021 (stay)

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. Pradeep Gaur, Mr. Amit Gaur and Ms. Sweta Sinha, Advocates.

versus

USHA DEVI & ORS. .....Respondents

Through: None

**CORAM:**
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**<u>O R D E R</u>**
% **04.10.2024**

**<u>MAC.APP. 328/2021</u>**

1. The Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of the appellant against the Award dated 02.09.2021 whereby the compensation has been awarded in the sum of Rs.15,27,160/-, to the respondent.

2. The Award has been challenged on three grounds:

(i) The first ground being the deceased was resident of Bihar but minimum wages have been taken for Haryana.

However, the record shows that it has been categorically recorded that the deceased was working in Kundli, Haryana. The learned Tribunal has rightly taken the minimum wages as prevalent in Haryana on the date of accident.

(ii) The second ground which has been taken is the minimum wages, should have been taken for 26 days in a month instead of 30 days.

Again this argument is completely not tenable because there is no averment to show that the deceased was working as a daily wager only on 26 days and not 30 days in a month.

(iii) The third ground is that it is a case of contributory negligence and the deceased was also equally negligent in causing the accident.

3. The learned Tribunal has observed in the impugned Award that no evidence whatsoever was led on behalf of the respondents/driver owner and the Insurance Company; rather PW-1 was examined by the claimant, who was duly cross-examined by the Insurance Company and no suggestion was given in regard to the manner in which the accident took place, except a suggestion that the accident occurred to the negligence of the deceased.

4. The certified copies of the documents (Ex.PW-1/7 collectively) filed in the Criminal Case registered about this accident have been filed wherein after investigations, it was concluded that the negligence was that of the driver. Pertinently, the driver, who was the best witness to counter or challenge the case of the appellants, had chosen not to appear in the witness box and also had not been produced by the Insurance Company.

5. After considering all the documents and the testimony of the appellants and also observing that the Insurance Company or the driver owner, have failed to adduce any evidence to establish the negligence on the part of the deceased, learned Tribunal had rightly concluded that it was the driver who was rash and negligent in causing the accident.

6. There is no merit in the Appeal filed on behalf of the Insurance Company, which is hereby dismissed.

7. The Statutory Amount along with the interest, which has been deposited by the Insurance Company at the time of filing of the Appeal, be refunded, in accordance with law.

8. The Appeal is disposed of accordingly along with the pending Application(s).

**NEENA BANSAL KRISHNA, J**

**OCTOBER 4, 2024/RS**