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

Decided on: 31st August, 2017

+ **MAC.APP. 853/2013**

**THE GENERAL MANAGER KARNATAKA STATE
TRANSPORT** Appellant

Through: Mr. Radhakrishna S. Hegde, Advocate
with Mr. Rakesh Saini, Advocate

versus

RISHI PAL SAINI AND ORS Respondents

Through: Mr. Zakir Hussain, Advocate for R-1
& R-2
Mr. K.N. Bhargavan, Advocate for
R-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Hemant Kumar Saini, a bachelor, son of the first and second respondents (collectively, the claimants), was travelling in a car make Indica bearing registration No.GA-01-E-3751 (the car) on 10.08.2008 from Panaji to Old Goa. When the car had reached at bypass road in the area of Baiginim, Goa at about 03:00 hours, it was involved in a collision against bus bearing registration No.KA-34-F-626 (the bus) and as a result of injuries suffered in the process Hemant Kumar Saini expired. The claimants instituted accident claim case (MACT No.349/10/2009) on 21.02.2009 before the Motor Accident Claims

Tribunal (the tribunal) at New Delhi, in as much as they are residents of Delhi. In the said claim petition, the appellant herein was impleaded as second respondent, it concededly being the owner of the bus. The driver of the bus was also impleaded as first respondent in the claim petition. In addition, the claimants also impleaded the owner and insurer of the car, they being sixth and seventh respondents in the appeal, this, besides two persons described as driver of the car, they being Subhojit Ghatak and Sita Ram Jadhav (fourth and fifth respondents respectively). The averments in the claim case clearly were that the drivers of both the vehicles were rash or negligent, giving rise to the cause of action.

2. In the inquiry, the claimants examined the first respondent (father of the deceased) as witness (PW-1) to bring home the necessary facts concerning the loss of dependency and also to prove on record the corresponding documents relating to the criminal case registered and investigated by the police, besides one Gopi Nathan (PW-2), an official from the office of employer of the deceased. On the other hand, on the part of the appellant, its driver (third respondent herein) appeared as witness in defence (R1W1) on the strength of his affidavit (Ex.R1W1/A). The fourth respondent (Subhojit Ghatak), who was described in the claim petition as “alleged driver” of the car, appeared in evidence (R3W1) on the basis of his affidavit (Ex.R3W1/A) denying that he was the driver of the car at the relevant point of time, his claim being that he was travelling as a passenger on the rear seat. The other person described in the claim petition as the driver, i.e., Sita Ram Jadhav (the fifth respondent), and the registered

owner of the car (the sixth respondent), also appeared as witnesses (R4W1 and R5W1) on the strength of their respective affidavits (Ex.RW4/A and RW5/A) respectively. The effect of the evidence of the said last two witnesses essentially is that the car was driven by the said Sita Ram Jadhav (fifth respondent), though his version being that the accident had occurred solely due to negligence on the part of bus driver. For completion of narration, it may be mentioned that the insurer of the car also examined a witness Ramnique Sachar (R6W1) to bring on record the omission on the part of the registered owner of the car to respond to a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) requiring certain documents to be brought out.

3. By judgment dated 04.09.2012, the tribunal held the bus driver guilty of negligence leading to the fatal accident. It awarded compensation in the sum of Rs.55,71,000/- (Rupees Fifty Five Lakhs Seventy One Thousand only) and fastened the liability on the driver and owner of the bus, jointly and severally, requiring the said compensation to be paid with interest @ nine per cent (9%) per annum.

4. The grievance of the appellant (owner of the bus) is that its contention about there being no negligence on the part of bus driver or the case of the claimants about it being a case of negligence on the part of drivers of both the vehicles has not even been considered nor adjudicated upon, the liability having been fastened wholly on the bus driver unfairly.

5. After some arguments, the learned counsel for the claimants fairly conceded that the judgment impugned by the appeal at hand is conspicuously silent on the above two crucial issues from which the liability would flow. His request is that the matter may be remitted to the tribunal for a clear decision after considering the evidence led in entirety.

6. In the foregoing facts and circumstances, the appeal is allowed. The impugned judgment is set aside.

7. The tribunal is called upon to render a fresh decision after taking into account the evidence in entirety, addressing the issue of negligence from the perspective not only of the case as set up by the claimants in the claim petition but also the defences that were raised and which were sought to be substantiated by the evidence of the aforementioned witnesses.

8. In the appeal, the computation of the compensation was also assailed on various grounds. The contentions in such regard are reserved and may be agitated before the tribunal for appropriate decision.

9. By order dated 20.09.2013, the appellant had been directed to deposit sixty per cent (60%) of the awarded amount with upto-date interest with the Registrar General of this court which was allowed to be released to the claimants in terms of the impugned judgment. It appears that after some deficiency, the appellant complied with the said directions by depositing an amount of Rs.47,21,588/-, as noted in the proceedings recorded on 24.02.2014. However, on the application

made by the claimants, by order passed on the said date Rs.37,00,000/- (Rupees Thirty Seven Lakhs), was allowed to be released from such deposit. The balance lying in deposit shall be presently refunded to the appellant with interest that would have accrued thereupon. The amount already received by the claimants would be liable to be adjusted as and when the tribunal renders a fresh decision. If any excess has been paid to the claimants over and above the liability that is determined by the tribunal in the fresh judgment to be passed appropriate directions shall be issued in such regard by the tribunal.

10. The parties are directed to appear before the tribunal for further proceedings in above light on 10th October, 2017. Needless to add, the tribunal will hold expeditious proceedings so as to render its fresh decision at an early date.

11. The statutory deposit shall also be refunded to the appellant.

12. The appeal stands disposed of in above terms. *Dasti.*

प्रत्येक जनकी

R.K.GAUBA, J.

AUGUST 31, 2017

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