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

+ **MAC.APP. 253/2024 & CM APPL. 28667/2024**

U P STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Mr.Shadab Khan, Advocate.

versus

DEEPMALA & ORS.

..... Respondents

Through: Mr.Shekhar Aggarwal,
Advocate for R-1&2.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **14.05.2024**

CM APPL. 28668/2024

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

MAC.APP. 253/2024 & CM APPL. 28667/2024

3. The appellant is preferring this appeal under Section 173 of the Motor Vehicles Act, 1988 assailing the impugned judgment - cum-award dated 24.01.2024 passed by the learned Presiding Officer, MACT, East, Karkardooma Court, Delhi.
4. Notice is accepted by learned counsel for respondent No.1 and 2 who is present on advance notice through VC.
5. Learned counsel for the appellant has urged that the impugned judgment cum award has been assailed on the ground that there was no negligence on the part of Rustam i.e. the driver of the offending bus since as per the testimony of the driver examined as RW-1, the bus was stationary and parked on one side of the road due to some



mechanical fault, which fault was being attended to by the driver and the conductor when the motorcycle being driven by the deceased came from behind and hit the offending bus. It is further urged that the deceased was not wearing a helmet, which fact was acknowledged by PW-2, Balram Sarkar in his cross-examination.

6. In so far as the findings rendered by the learned Tribunal on the point of negligence, I find no merits in the plea espoused by learned counsel for the appellant that the testimony of PW-2, who was an eye witness, is very categorical and uncontroverted, appearing to be truthful, inasmuch as, that the offending bus was being reversed by its driver in a negligent manner, unmindful of the traffic coming from behind while it was dark in the night between 12 AM to 12.30 AM.

7. However, learned counsel for the appellant has urged that the learned Tribunal has not taken into consideration that the deceased motorcyclist was not wearing a helmet and reliance is placed on decision by this Court in *Avtar Singh v. Saeeda Begum and Others* decided on 24.07.2019 in MAC.APP.1043/2018 (2019 SCC Online Del 9440).

8. The issues raised by the counsel for the appellant with regard to contributory negligence on the part of the deceased requires a deeper examination.

9. Since learned counsel for the appellant submits that respondent No.3 is a proforma party, the service of notice is dispensed with.

10. The operation of the impugned judgment – cum – award dated 24.01.2024 is hereby stayed subject to the appellant depositing the entire amount of the compensation with accrued interest with the learned Tribunal within four weeks from today. On such deposit, 75% of the amount of compensation with interest be released to the



claimants without prejudice in terms of the directions passed by the learned Tribunal.

11. Let digitised TCR be summoned.
12. Renotify for final hearing on 30.09.2024.

DHARMESH SHARMA, J.

MAY 14, 2024
VLD