IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Motor Vehicles Act, 1939

FAO No.85/1983 and CM No.2358/1983

Judgment reserved on:19th November, 2008

Judgment delivered on 4th December, 2008

The New India Assurance Co.Ltd.
Area Office-Gulab Bhawan
(Rear Block), 6, Bahadur Shah
Zafar Marg, New Delhi-2 . Appellant

Through: Mr.Salil Paul, Adv.

Versus

1. Mohinder Dev
   S/o Arjun Dass,
   R/o House No.2627, Chelawali
   Pati, Muktsar Khas, P.S.
   Muktsar Distt. Faridkot.

2. M/s Jangir Singh Bhajan Singh
   R/o Bhatinda Road, Main Petrol
   Pump, Muktsar, Distt.Faridkot.

3. Mrs.Kamlesh Sethi
   Widow of late Sh.Leela Dhar Sethi

4. Miss Geeta Sethi,
   D/o late Sh.Leela Dhar Sethi

5. Master Anish Sethi
   S/o late Sh.Leela Dhar Sethi

6. Smt.Thakuri Devi
   W/o late Shri Deena Nath Sethi
   R/o B/28-B, Vijay Nagar,
   New Delhi-110009. Respondents.

Through: Mr.V.P.Chaudhary, Sr.Adv.
with Mr.Nitinjya Chaudhary and
Ms.Sushma Sachdeva, Advs. for R-3
to 6.

V.B.Gupta, J.

1. Present appeal has been filed by the appellant-Insurance company under Section 110-D of the Motor Vehicles Act, 1939 (as amended) (in short as Act) against the award dated 22nd February, 1983 passed by Mr.P.R.Thakur, Judge Motor Accidents Claim Tribunal, Delhi (for short as Tribunal).

2. Brief facts of this case are that deceased, Sh. Leela Dhar Sethi, on 15th November, 1981 at about 2.15 p.m. was going on his cycle from Azadpur side towards Rana Partab Bagh passing through State Bank Colony and G.T.Karnal Road, when a truck No.PUA-3788 driven rashly and negligently by respondent No.1 came at a fast speed from the opposite direction and came on extreme wrong side of the road and struck against the cycle of the deceased. As a result of the impact, deceased fell on the road and his head was crushed under the wheels of the truck.

3. The truck is owned by respondent No.2 and is insured with the appellant.

4. Vide impugned judgment, the Tribunal passed an award in the sum of Rs.1,25,880/- and awarded 12% interest per annum, from the date of petition till the date of payment.

5. Being aggrieved, the appellant has filed the present appeal, while respondents 3 to 6 have filed cross-objections against the award, under Order 41 Rule 22 CPC.

6. Notice of this appeal was issued to the respondents and respondent No.1 was served by publication but did not appear, whereas, counsel for respondent No.2, appeared initially, but later on he absented.

7. Arguments have been advanced by learned counsel for the appellant as well as counsel for respondents 3 to 6.

8. The first contention of learned counsel for the appellant is that the liability of appellant-Insurance Company, in the present case, is limited to the extent of Rs.50,000/- only, as per policy proved on record.

9. The next contention is that the Tribunal erred in not calling the respondent No.2, the owner to produce the original insurance policy which is in his possession and the Tribunal wrongly rejected the application of appellant filed under Order 11 Rule 14 CPC.

10. It is also contended that the Tribunal should have taken into consideration the true copy produced by the appellant as correct, since the owner intentionally has withheld the original policy and the appellant was unable to file the carbon copy of the insurance policy as the same has been misplaced at the time of shifting from the branch office of

the appellant at Malot in Jullunder to its divisional office and, thus, the true copy ought to have been allowed to be produced.

11. Learned counsel for the appellant in support of his contentions cited various judgments, namely, Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Ors. 1968 SC 1413 where it had been laid down that; Where a party in possession of best evidence which would throw light on the issue on controversy withholding with it, the Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him.

12. In another decision of Apex Court, Sh.M.L.Sethi v. Shri R.P.Kapur 1972 SC 2379, while discussing the provisions of Order 11 Rule 12 CPC, it has been laid down that; The documents sought to be discovered need not be admissible in evidence in the enquiry or proceedings.

13. Lastly, it has been contended that strict rule of evidence are not applicable to the claim proceedings under the Act and on this point learned counsel cited decision of Apex Court, namely, Union of India v. T.R.Varma AIR 1957 SC 882, in which it has been held that; The Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character.

14. On the other hand, it has been contended by learned counsel for respondents 3 to 6 that appellant has failed to establish this fact that the insurance policy in this case was limited, since there is no policy on record. Though the policy were summoned from the owner but he did not produce it and as such under these circumstances, the appellant was to produce the secondary evidence, that is, carbon copy of the insurance policy but the same was not produced and instead it placed on record, the true copy which is not admissible in evidence.

15. In support of his contention, learned counsel cited Tejinder Singh Gujral v. Inderjit Singh and Anr. 2007 ACJ 37 in which it was held that; The learned Tribunal, however, committed an error in opining that the insurance policy was not required to be proved. Learned single Judge of the High Court, in our opinion, rightly held that the insurance policy having not brought on record, a presumption would arise that the liability of the insurer was unlimited.

16. The Tribunal has dealt this issue in detail, and gave its reasoning as under; In the present case, the owner-cum-insured has been contesting the proceedings throughout. What was, therefore, required in the circumstances was that in case, the Insurance Company wanted to prove the fact that its liability was limited to Rs.50,000/-, it ought to have called upon the insured- the respondent No.2 to have produced on record the original Policy of Insurance which the respondent No.3 had issued, to the respondent No.2. During the entire course of proceedings, no such notice was served by respondent No.3 on the respondent No.2, requiring the later to produce the original Policy of Insurance issued to it. Secondary evidence cannot allowed to be led unless and until it is established on record that the primary evidence is not available or is not forthcoming.

Section 66 of the Indian Evidence Act provides that secondary evidence of the contents of the documents shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is or to his attorney or pleader, such notice to produce it as is prescribed by law and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case. Let us now deal with the circumstances in which the copy of the Insurance Policy was alleged to have been proved as Ex.RW1/A by the statement of RW1, the official witness from the office of the respondent-Insurance Company. In order to appreciate the contentions of the parties as to whether the copy of the Insurance Policy has been validly and legally proved, notwithstanding its exhibition as Ex.RW1/A, it will be necessary to discuss in detail the testimony of RW1/A. Sh.Parween Wadhawan was the Assistant from the Legal Department of the respondent-Insurance Company at New Delhi. He produced the true copy of the Insurance Policy in respect of the vehicle in question, which was valid from 24.1.1981 to 23.1.1982. He deposed that the Insurance Policy in question was issued by Malout office in District Jullunder. The true copy of the Insurance Policy, according to this witness, was signed by Sh.S.S.Sharma, Inspector, whose signatures he identified on account of the fact that he had been receiving the communications from him, duly singed by him in the course of discharge of his official duties. Such true copy of the Insurance Policy was exhibited as Ex.RW1/A with observations that the mere fact that the Policy has been exhibited as RW1/A will not mean that it had been conclusively proved in accordance with the procedure of law. In his cross-examination, he made revaluations which indeed make his statement devoid of any value. He stated that Sh.S.S.Sharma, Inspector was still working in the office; that the true copy of the Insurance Policy produced on record was not the office copy which was prepared simultaneously with the preparation of the original Insurance Policy; that he had never seen Sh.S.S.Sharma, Inspector signing in his presence nor he had ever met him nor he could even identify him. He stated that according to the procedure, carbon copies of the Policy are prepared simultaneously at the time of issuance of the Original Policy. One such carbon copy is maintained by the issuing Inspector in his record while the other carbon copy is sent to the Mechanisation Department which, as at present, is at New Delhi. It is thus clear that there were at least two carbon copies prepared at the time of issuance of the original Policy of Insurance, and it has not been proved that neither such carbon copy of the Insurance Policy is available or traceable either in the record of the issuing Inspector who is still alive and kicking and also working in the office of the Insurance Company or in the record maintained in the Mechanisation Department of the Insurance Company at New Delhi. It is not in dispute that by charging extra premium, a Insurance Company can undertake enhanced liability beyond the limits of statutory liability provided in the statute. It was, therefore, very essential for the respondent No.3 in the present case to have proved on record the fact that no extra premium to cover any extra liability had been charged from the insured in case it wanted to prove that its liability was that as fixed under Section 95 of the Motor Vehicles Act, 1939. It is in any case clear that the alleged true copy produced on record by RW1 cannot at all be said to be a valid document to prove the contents of the original Policy of the Insurance. In these circumstances, and in view of the fact that the carbon copies of the Policy of the Insurance available in the record of the Insurance Company having not been brought on record and proved, it can be safely said that the Insurance Company has not been able to

prove its liability being limited to Rs.50,000/- only as alleged in its written statement. The present case is a fit case where presumption ought to be drawn against the Insurance Company, and the Insurance Company has to be held liable for the full amount irrespective of Section 95(2) of the Act, and the liability of the Insurance Company will be co-extensive with the amount of award.

17. It may be pertinent to point out that, the appellant moved an application under Order 41 Rule 27 read with Section 151, CPC seeking permission to bring on record carbon copy of the original Insurance Policy and the reason given by the appellant in the application was that appellant-Insurance Company could not file the carbon copy of the Insurance Policy before the Tribunal as the same was misplaced due to the shifting of the branch office and despite due diligence and best efforts, the same could not be traced out. Now, the carbon copy of the same has been traced out from its own record.

18. Kailash Gambhir, J. vide order dated 20th February, 2008, dismissed the application holding that; The main defence of the appellant before the Tribunal was that it had limited liability and for proving the said fact it was imperative on the part of the appellant to have proved the carbon copy of the insurance policy in accordance with law. On the failure of the appellant to prove the insurance policy before the Tribunal, the appellant cannot be permitted to fill the lacuna and gaps at this belated stage, more particularly when the appellant has failed to give any plausible explanation for filing the carbon copy of the policy at this stage. It is matter of record that appellant did not send any notice under Order 12 Rule 8 CPC to the owner of the offending vehicle for production of the original insurance policy and also failed to offer any explanation as to why the carbon copy could not be produced from the Mechanization Department of the insurance company where also the parallel records are maintained. Further held; The exercise of due diligence, both when such evidence was either not within his knowledge or could not be produced at the relevant stage and also when the same is sought to be produced at the belated stage is required to be explained by the party invoking the said provision of Order 41 Rule 27 CPC. In the present case, the appellant has failed to disclose such exercise of due diligence on its part. Therefore, I do not find any merit in the present application and the submissions made by the counsel for the appellant.

19. It is, thus, apparent from the record, that carbon copy of the insurance policy was neither placed nor proved before the Tribunal. Once the application for additional evidence of the appellant-insurance company has been rejected, the appellant cannot be permitted to re-agitate again that appellant filed application under Order 11 Rule 14 CPC and the true copy of insurance policy was proved on record, so it should be taken as secondary evidence.

20. Since, the secondary evidence, that is, carbon copy of the insurance policy, has not been placed or proved on record, a presumption would arise that the liability of the insurer was unlimited and I do not see any reason to differ with the findings given by the Tribunal.

21. Accordingly, the findings of the Tribunal on this issue are affirmed and it is held that the Insurance policy in this case was unlimited.

22. However, I express my deep anguish and sorrow upon the callous attitude of the appellant-Insurance Company, in filing this appeal when appellant knew from the day one, that there is no legal force in their appeal, but still they persisted in pursuing the matter for over a quarter century.

23. The provisions as enacted in the Act were brought in the statue book to grant relief to the victim of an accident or his dependant/s by way of compensation. These obviously are beneficial provisions to give relief to a person who has suffered grievous injury or to the dependants of a victim who are left without a bread earner. The object thereof cannot be permitted to be frustrated.

24. The law relating to award of compensation in motor accident cases has developed enormously. It is a good sign. Judicial pronouncements, dealing with the subject, have greatly widened the horizons in this field. New principles have been enunciated to cover various concepts of damages. Enough care has been taken to see that the victim, in case of personal injuries, and the dependents in cases of fatal accidents, do not suffer incalculably due to the accident in question and decisions make an attempt to equate, as for as possible, the misery with the compensation awarded, though money compensation cannot be considered to be in any way equal to the injuries sustained or the life lost. Pecuniary and non-pecuniary damages have to be carefully determined. Need for future case is more, so that the victim or the dependents do not lead a miserable life. [State of Himachal Pradesh v. Shrichand Kishan Hazri (1990) 1 Ac.C.C. 44]

25. In the present case, the Tribunal awarded compensation after a protracted trial and instead of letting the poor victims of the road accident, live in peace and have little solace, the appellant/Insurance Company is after their blood and has filed the present appeal.

26. It appears that the present appeal has filed by the appellant mechanically, without any legal justification and there being no application of judicious mind and not taking into consideration, the various decisions of the Apex Court and various High Courts.

27. In its anxiety to alleviate the sufferings of those who are suddenly struck by the bolt of misfortune, the legislature provided a cheap and summary remedy before the Tribunals. The contribution of the Tribunals and the Courts should be ensured that the benefits reach the helpless persons. Complaints are rife that benefits received ultimately by the claimants are only nominal and the anxiety of the legislature and the exercise by the Tribunals and Courts are all in vain.

28. In Oriental Insurance Co. v. Zarifa and others, AIR 1995 J and K 81, the Jammu and Kashmir High Court has observed as under; Before concluding, it is also observed that it is a social welfare legislation under which the compensation is provided by way of Award to the people who sustain bodily injuries or get killed in the vehicular accident.

These people who sustain injuries or whose kith and kins are killed, are necessarily to be provided such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants.

29. When application for additional evidence filed on behalf of appellant was dismissed, at that very time, the appellant-Insurance Company ought to have gracefully accepted its defeat in this long drawn legal battle, but it still persisted in flocking the dead horse.

30. The public sector undertakings, such as the appellant, who have enormous manpower and financial resources, did not let the poor victims of road accident, live in peace and had prolonged this legal battle for more than 25 years in its zeal to see that the road accident victims, do not get more than Rs.50,000/-.

31. In the present case, the accident took place in 1981, that is, more than 27 years ago. Deceased who died in this unfortunate road accident, was aged 40 years, is survived by the claimants, his wife aged 35 years at that time and now 62 years old, minor daughter then (aged 9 years) now 36 years, minor son then (6 years old) and now 33 years and mother aged then (67 years old) now 94 years old. 32. The young widow, minor children and aged mother, were awarded compensation in 1983, so that they could have some solace and could fulfill some of their essential and necessary requirements of life in a comfortable manner but the appellant-Insurance Company left no stone unturned in depriving them of the benefits of this social legislation.

33. These public sector undertakings who have their full fledge legal departments, should not go on filing appeals mechanically in every matter. Before filing any appeal, matter should be examined at highest level by their legal branch so that there is no wastage of manpower and financial resources of the Insurance Company and they should make every effort to reduce the frivolous and dead litigation.

34. Thus, I do not find any legal force in this appeal and the same is liable to be dismissed with costs of Rs.25,000/- CM No.9328/2008(cross objections)

35. It is contended by learned counsel for the claimants that while calculating the salary of the deceased, the Tribunal did not consider future prospects, since deceased would have got yearly increment and would have been benefited by promotion, as well as by upward revision of salary.

36. The other contention is that the Tribunal wrongly made deduction of 50% from the total amount of the deceased. Keeping in view the fact that the deceased left behind two minor children besides widow and aged mother, Tribunal should not have made deduction of more than 25%. Moreover, no amount for loss of consortium, love and affection and for funeral expenses have been paid.

37. It is also contended that the Tribunal fixed quantum of compensation on a much lower side and wrongly reduced interest to 6% per annum from date of petition till the date of payment. The interest ought to have been maintained at 12% per annum.

38. Learned counsel for the claimants in support of its contention cited various judgments namely; U.P.State Road Transport Corporation v.Trilok Chandra and Ors., 1996 ACJ 831, Sarla Dixit and Anr. V.Balwant Yadav and Ors., 1996 ACJ 581, General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and Ors., 1994 ACJ 1, Hussan Bano and Ors v.Subhash Chand and Ors. 2003 ACJ 1114.

39. On the other hand, it has been contended by learned counsel for the appellant that the Tribunal has rightly calculated income of the deceased and for future prospects, there was no evidence and as such the compensation awarded by the Tribunal is just and fair.

40. The object of payment of compensation under the Motor Vehicles Act is to compensate the dependants of the deceased for the loss of dependency due to the death of the earning member. The Court has to assess the quantum of compensation payable to the dependants which is just proper and reasonable. The amount of compensation is to be fixed in such a manner so that it does not amount to undue enrichment of the dependants since the Court is to determine the amount of compensation which it appears to it to be just. Some amount of guess work is always allowable in fixing the monthly income as well as the loss of dependency and consequently the quantum of compensation.

41. In U.P. State Road Transport Corpn. v. Krishna Bala and Ors., III (2006) ACC 361 (SC), the Apex Court has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under: 6. Certain principles were highlighted by this Court in the case of Municipal Corporation of Delhi v. Subhagwanti, 1966 (3) SCR 649 in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered by them as a result of the death. How much has the widow and family lost by the father's death The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd., All ER p.665 A-B, which says:- The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt. 7. There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case (supra) and the second in Nance v. British Columbia Electric Railway Co. Ltd., 1951 (2) All ER 448. 8. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that

of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In, ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. Further Court held that; 10. In regard to the choice of the multiplicand the Halsbury's Laws of England in Vol. 34, Para 98 states the principle thus: 98. Assessment of damages under the Fatal Accidents Act 1976- The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses. The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have elapsed between the death and the trial is deducted from a multiplier based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death. 11. As to the multiplier, Halsbury states: However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.

42. In Sarla Dixit and Anr. v.Balwant Yadav and Ors.,(supra), the Apex Court has observed as under; So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise.

43. Thus, in this case the Apex Court applied a multiplier of 15 only when the deceased was 27 years old.

44. Sarla Dixit was followed by the Apex Court in Bijoy Kumar Dugar vs. Bidyadhar Dutta and Ors. AIR 2006 SC 1255 in which it was held; It is by now well-settled that the compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to the them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a multiplier. The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to ones earning capacity.

45. In General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others, (supra) the age of deceased was 39 years and the Apex Court has applied the multiplier of 12 only.

46. In Managing Director, Tamil Nadu State Transport Corporation Ltd. v. K.I. Bindu and others, 2006 ACJ 423, the age of deceased was 34 years and the Apex Court has applied the multiplier of 13 only.

47. As per claim petition, the deceased was aged 40 years and the Tribunal applied a multiplier of 19 which is admittedly on much higher side.

48. With regard to the future prospects in Bijoy Kumar Dugar vs. Bidyadhar Dutta and Ors. (Supra), it has been laid down that :- The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

49. In the present case, there is no evidence brought on record by the claimants to show the future prospects of the deceased. This contention, in my view, is not tenable to sustain it.

50. Coming to the deduction of 50% from the total amount of the deceased, in New India Assurance Co. Ltd. vs. Charlie and another, AIR 2005 Supreme Court 2157, the Apex Court observed as under; What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was

nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.

51. Since in the present case, the deceased left behind the widow, two minor children and aged mother, 1/3rd deduction towards personal expenses, would have been quite reasonable but Tribunal wrongly deducted 50 per cent towards personal expenses of the deceased.

52. Nevertheless, the multiplier of 19 adopted in this case by the Tribunal is far excessive in view of the various decisions of the Apex Court. So, the claimants should have no grudge regarding 50% deduction and not getting anything towards loss of consortium, love and affection and future prospects since multiplier of 19 is not being reduced.

53. Now coming to the interest, the Tribunal has awarded the same keeping in view the bank rate prevailing at that time, so, no fault can be found on this count.

54. Under the circumstances, I find that the compensation awarded by the Tribunal is just, fair and equitable and there is no force in the cross objections, which are liable to the dismissed. Conclusion:-

55. In view of the discussions held above, the present appeal filed by the appellant is dismissed with costs of Rs.25,000/- (Rs.Twenty Five Thousand only)

56. Appellant is directed to deposit the costs by way of a cross cheque in the name of Registrar General of this Court, within two months from today.

57. The cross-objections filed by the claimants also stands dismissed.

58. Trial Court record be sent back.

59. List for compliance on 10th February, 2009.

Sd./-

December 04, 2008 V.B.GUPTA, J.