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**(2011) 05 AHC CK 0305**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 23357 of 2011

Shahana Begum and Another

APPELLANT

Vs

Saddam Hussain and Others

RESPONDENT

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**Date of Decision:** May 10, 2011

**Hon'ble Judges:** Dilip Gupta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Dilip Gupta, J.

The Petitioners have sought the quashing of the order dated 21st January, 2011 passed by the learned IInd Additional District Judge, Gautam Budh Nagar by which the application filed by the Petitioners for review of the award dated 9th June, 2010 passed by the Motor Accident Claims Tribunal has been rejected.

2. It transpires from the records of the writ petition that the Petitioners filed Claim Petition No. 246 of 2008 with the allegation that Mohd. Fazil (son of claimant No. 1 and husband of claimant No. 2) met with an accident on 24th July, 2008 with a tempo and later on died. The Tribunal by its judgment and order dated 9th June, 2010 made an award against the driver and owner of the tempo for Rs. 3,65,250/- with interest as the driver of the tempo was not having a valid licence. It was observed that the Licensing Authority, on verification, found that the licence had not been issued to the driver of the tempo. It is the case of the Petitioners that they subsequently learnt that the authorities had sought verification of a wrong number from the Licensing Authority and, therefore, the report cannot be relied upon. The review application was, accordingly, filed. This application was rejected by the Tribunal by the order dated 21st January, 2011.

3. Learned Counsel for the Petitioners submitted that the review application should have been allowed since the report was sought from the Licensing Authority in respect of a different number and not with respect to the licence of the driver of the tempo with which the accident had occurred. It is, therefore, his submission that an

apparent error crept in award which was required to be rectified.

4. The contention of the learned Counsel for the Petitioners cannot be accepted. The Tribunal has observed that there is a vast difference between the appellate power and the power to review of a judgment and in the present case, the award was passed on the basis of a report which had been placed before it, There was, therefore, no error in the award which could have been made a ground for review of the order. It is not a case where the Tribunal misread the report which had been placed before it. What is sought to be contended is that the report itself is wrong since it was submitted in respect of a different driving licence number. This is an issue which should have been raised by the Petitioners before the award was delivered and cannot be made a ground for review of the order. This order, however, shall not prevent the Petitioners from raising this issue in appeal, if they are so advised.

5. The writ petition is, accordingly, dismissed.