

* **HIGH COURT OF DELHI : NEW DELHI**

MAC App. No.469/2008 & CM No.12023/2008

% Judgment reserved on: 25th August, 2008

Judgment delivered on: 1st September, 2008

The New India Assurance Co. Ltd.,
Jeevan Bharti Building,
Connaught Place,
New Delhi

Also at:

DRO-II,

Asaf Ali Road,

New Delhi

....Appellant

Through: Mr. Pankaj Seth, Adv.

Versus

1. Smt. Satto,
W/o. Late Sh. Kashmira,
R/o. Vill & PO:Harsoli,
District:Muzafar Nagar, U.P.

2. Sh. Sunil Kumar,
S/o. Sh. Elam Singh,
R/o. Village Shoran,
Post Shahpur,
District: Muzaffar Nagar, U.P.

3. Sh. Mohd. Qayum
S/o. Mohd. Sarif
R/o. Village Harsoli
Dist. Muzaffarnagar, UP

....Respondents.

Through:

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

V.B.Gupta, J.

By way of the present appeal filed under Section 173 of the Motor Vehicle Act, 1988 (for short as 'Act'), the Appellant/New India Insurance Company has challenged the impugned order dated 23rd April, 2008 passed by Sh. Pradeep Chaddah, Judge, MACT, Delhi vide which the appellant was directed to pay interim compensation of Rs.50,000/- as envisaged under Section 140 of the Act, to the claimants.

2. The main grievance of the appellant is that the deceased was a Gratuitous passenger in the vehicle which was meant for carrying goods and hence the Insurance Company is not liable. Furthermore, it is a question of evidence as to whether the deceased was

travelling in the tempo in the capacity of owner of the goods or as a gratuitous passenger at the time of accident and it could be proved only on the basis of evidence and as such finding given by the Tribunal that the deceased was travelling as a Gratuitous passenger, will prejudice the rights of the appellant, in defending the case on merits at the time of trial.

3. For awarding interim relief under Section 140 of the Act, the Tribunal is required to see prima-facie, the factum of accident involving the vehicle and the factum of death of the person in a road accident.

4. The case of the appellant/Insurance Company is that deceased was travelling as a Gratuitous passenger in a goods vehicle whereas, the case of the claimants is that, the deceased was travelling in the capacity of representative of the owner of the goods which were in the vehicle.

5. So, it is a matter of evidence which has to be gone into by the trial court, as to whether the deceased was travelling as a Gratuitous passenger or in the capacity

of representative of the owner of the goods which were in the vehicle.

6. Under these circumstances, I do not find any merits in the present appeal.

7. However, this question whether the deceased was a Gratuitous passenger travelling in goods vehicle or he was travelling in the capacity of representative of the owner of the goods which were in the vehicle, is left open to be decided by the Tribunal after recording evidence.

8. With these observations, the present appeal stands disposed of.

September 01, 2008
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V.B.GUPTA, J.