* IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App. No.46/2010

Date of Decision: September 20, 2010

NATIONAL INSURANCE CO LTD ..... Appellant
through Mr. Manoj R. Sinha, Advocate

versus

AKSHAY KUMAR & ORS ..... Respondents
through Ms. Kamlesh Mahajan, Advocate for respondent No.3.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the 'Digest'?

REKHA SHARMA, J. (ORAL)

It is not disputed by learned counsel for respondent No.3 who is the owner of the offending vehicle that his vehicle was insured with the appellant as a "goods vehicle" and that respondent No.1 who was one of the claimants was travelling in the said vehicle as a gratuitous passenger. The learned Motor Accident Claims Tribunal despite having held that the vehicle in question was insured as a "goods vehicle" and respondent No.1 was travelling in the same as a gratuitous passenger has directed the appellant to satisfy the claim at the first instance,

Signature Not Verified
Digitally Signed By:ANULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

though it has granted to the appellant the right to recover the same from the owner and the driver of the vehicle.

The learned counsel for the Insurance Company has relied upon a judgment of the Supreme Court in the case of *M.V.Jayadevappa & Anr.* versus *Oriental Fire & General Insurance Company Ltd. & Ors.,* reported in I (2005) ACC 472 wherein it has been held that where a vehicle was insured as a commercial vehicle and it was carrying gratuitous passengers, the Insurance Company has no liability to make the payment. The relevant paragraphs of the judgment read as under:-

> "x x x x x x
>
> 2. We have perused the copy of the Insurance Policy (Exh.D2) available on record. It records the vehicle as commercial vehicle. In the schedule annexed with the policy the vehicle is described as "Cheverolet Lorry with open body". The licensed carrying capacity of goods is specified as "2 tons". It is no where mentioned that the vehicle was authorised to carry passengers.
>
> 3. The submission of the learned Counsel for the appellant has been that the vehicle being a passengers vehicle, the liability should have been passed on to the Insurance Company without regard to the fact whether the passengers were gratuitous or not. Having perused the particulars of the vehicle, as given in the Insurance Policy, we are satisfied that the vehicle could not have carried passengers. The vehicle seems to have been a goods vehicle. The High Court has rightly exonerated the Insurance Company."

Having heard the learned counsels for the parties, I feel that the aforesaid judgment of the Supreme Court fully applies to the case of the appellant. As already noticed above, the vehicle involved in the present appeal was also a goods/commercial vehicle and it was also

carrying gratuitous passengers. Hence, as in the case before the Supreme Court, in this case also the Claims Tribunal ought to have fully exonerated the Insurance Company from any liability. That having not been done, the award needs to be corrected and accordingly, the same is modified to the extent that instead of the Insurance Company, it will be the owner and the driver of the offending vehicle who shall pay the awarded amount to the claimant.

The Insurance Company shall be entitled to withdraw the amount of compensation through counsel which it has already deposited with the Registrar General of this Court.

For the foregoing reasons, the appeal is allowed to the extent noticed above.

REKHA SHARMA, J

SEPTEMBER 20, 2010
ka