

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

+ MAC.APP.No.188/2009

Date of Decision:28th May, 2010

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NARENDER KUMAR Appellant
Through : Ms. Suman Bagga, Adv.

versus

NATIONAL INSURANCE CO. LTD. & ORS..... Respondents
Through ; Ms. Shantha Devi Raman,
Adv. for R-1.
Mr. Anshuman Bal, Adv. for
R-2.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

CM No.4929/2009 (Delay)

1. For the reasons stated in the application and also noting that the appellant has very good case on merits, the delay in filing the appeal is condoned.
2. The application stands disposed of.

MAC.APP.No.188/2009

1. The appellant has challenged the award of the learned Tribunal whereby the compensation of Rs.2,24,676/- has been awarded to claimant/respondent No.2.

2. The accident dated 13th April, 2006 resulted in grievous injuries to respondent No.2. Respondent No.2 was travelling in Canter bearing No.HR-69-6478 which met with an accident. The Canter overturned due to the rash and negligent driving of its driver. Respondent No.2 suffered grievous injuries due to the accident. Respondent No.2 was hospitalized twice. Respondent No.2 remained in hospital initially for eighteen days and on the second occasion for six days. Respondent No.2 was operated upon and a rod was inserted in his left leg. The permanent disability of respondent No.2 has been assessed to be 25% in respect of the left leg.

3. The appellant is the owner, respondent No.3 is the driver and respondent No.1 is the insurer of the offending vehicle.

4. The Claims Tribunal passed an award against the appellant and respondent No.3. However, respondent No.1 has been exonerated on the ground that the offending vehicle was a good vehicle and the goods did not belong to respondent No.2. The Claims Tribunal referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs. Baljit Kaur, (2004) 2 SCC** in which it was held that the insurer was not liable to pay the compensation to the gratuitous passenger in the goods vehicle.

5. The learned counsel for the appellant has urged at the time of hearing of this appeal that respondent No.2 was not a gratuitous passenger and he was travelling with the goods in the vehicle. The learned counsel for the appellant submits that respondent No.2 was on duty with the goods on the offending vehicle which was stated in para 23 (1) of the petition. The learned counsel for the appellant refers to and relies upon the statement made by respondent No.2 in the witness box as PW-1. Respondent No.2 stated in his examination-in-chief as under:-

“That on 13.04.06 at about 3.00 P.M. I was going in Canter no.HR-69-6478 alongwith goods. The canter was being driven by its driver at a very high speed driven most rashly and negligently when the canter reached Bhalaswa chowk outer ring road, Jahangirpuri, Delhi. The driver lost control as a result of which the vehicle hit against the another vehicle and thereafter it overturned as a result I received fracture left tibial plateau.”

6. In cross-examination, PW-1 deposed as under:-

“I have with me my driving licence to prove my identity. I am a labourer. I had a duty in the vehicle no.HR-69-6478. The said vehicle in the company Kiran Tyagi Transport. I do not work in Tyagi Transport. It was not my goods which were being transported by the said vehicle but it was owned by the government. The canter no. HR-69-6478 is mend for carrying goods. It is wrong to suggest that I was simply travelling in the canter. Vol. I was on duty with the goods.”

7. The learned counsel for the respondent No.1 has vehemently argued it has not been sufficiently proved that the respondent No.2 was not a gratuitous passenger. The learned counsel for respondent No.2 submits that respondent No.1 has not even produced/proved the copy of the insurance policy and the terms and conditions of the policy and in that view of the matter, the case should be decided on the basis of the admitted insurance on the insurance policy of respondent No.1.

8. In the facts and circumstances of this case, this Court is of the view that the appellant was travelling with the goods on the offending vehicle and was not a gratuitous passenger and was, therefore, covered under the policy.

9. The appeal is allowed and the impugned award is modified to the extent that respondent No.2 shall be entitled to the award amount from respondent No.1.

10. The appellant has deposited a sum of Rs.50,000/- with UCO Bank in terms of the order dated 16th November, 2009 and the same amount has been released to respondent No.2 in terms of the order dated 11th December, 2009. In that view of the matter, respondent No.1 shall make the payment of Rs.50,000/- out of the award amount to the appellant and after adjusting the said amount of Rs.50,000/-, respondent No.1 shall deposit the balance award amount along with interest with UCO Bank A/c Mohd. Noor Alam, Delhi High Court Branch, within 30 days through Mr.M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

11. Upon the said amount being deposited, the UCO Bank is directed to release 10% of the said amount to respondent No.2 by transferring the same to his UCO Bank account. The remaining amount be kept in fixed deposits in the name of respondent No.2 in the following manner:-

- (i) Fixed deposit in respect of 10% of the amount for a period of 6 months.
- (ii) Fixed deposit in respect of 10% of the amount for a period of one year.
- (iii) Fixed deposit in respect of 10% of the amount for a period of one and a half years.
- (iv) Fixed deposit in respect of 10% of the amount for a period of two years.
- (v) Fixed deposit in respect of 10% of the amount for a period of two and a half years.
- (vi) Fixed deposit in respect of 10% of the amount for a period of three years.
- (vii) Fixed deposit in respect of 10% of the amount for a period of three and a half years.
- (viii) Fixed deposit in respect of 10% of the amount for a period of four years.
- (ix) Fixed deposit in respect of 10% of the amount for a period of four and a half years.

12. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.2.

13. Withdrawal from the aforesaid account shall be permitted to respondent No.2 after due verification and the Bank shall issue photo Identity Card to respondent No.2 to facilitate identity.

14. No cheque book be issued to respondent No.2 without the permission of this Court.

15. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

16. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

17. Half yearly statement of account be filed by the Bank in this Court.

18. On the request of respondent No.2, the Bank shall transfer the Savings Account to any other branch according to the convenience of respondent No.2.

19. Respondent No.2 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

20. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

21. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

MAY 28, 2010
HL

J.R. MIDHA, J