

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

Date of decision: 1st November, 2012

+ **MAC. APP. 647/2012**

SMT. SUMAN Appellant
Through: Mr.Naresh C.Sharma, Advocate

versus

SMT. MANJU DEVI & ORS. Respondents
Through: Mr.S.N.Parashar, Advocate for R-1 to R-5

+ **MAC. APP. 651/2012**

SHYAM SUNDER Appellant
Through: Nemo.

versus

SMT. MANJU DEVI & ORS. Respondents
Through: Mr.S.N.Parashar, Advocate for R-1 to R-5
Mr.Naresh C.Sharma, Advocate for R-7

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC. APP. 647/2012 & MAC. APP. 651/2012) arise out of a judgment dated 30th January, 2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) filed by Respondents No.1 to 5 was allowed and a compensation of ₹ 8,70,924/- along with interest @ 7.5% per annum from 15.04.2006 till the date of payment was granted.

2. During the course of arguments, it was urged by the learned counsel for the Appellant that in this case the driver was ordered to be impleaded as Respondent No.3 by an order dated 18.05.2007. He was not permitted to file his written statement. He was impleaded at the stage of recording of the evidence of the Respondents and no opportunity was granted to the driver (Respondent No.7 herein) to cross-examine the witnesses or to present his case.
3. I have before me the Trial Court record. The Claim Petitions were instituted on 15.04.2006. In the initial Claim Petitions, Hawa Singh was impleaded as Respondent No.1 and Manmohan Singh was impleaded as Respondent No.2. They were alleged to be the owners of the vehicle. Strangely, the name of the driver was not mentioned in the Claim Petition. Subsequently, an Application dated 10.05.2007 was moved before the Claims Tribunal on 14.05.2007 for impleading Shyam Sunder S/o Ram Niwas, as driver of the offending vehicle bearing No.HR-10D-3981. The file was taken up on 18.05.2007. The Application was allowed and a notice to the driver was ordered to be issued for the next date of hearing, that is, 19.07.2007. Curiously, there is no mention of the previous order, that is, 18.05.2007 in the order dated 19.07.2007. It appears that on 19.07.2007, the Claims Tribunal was not even aware of the fact that the driver had been ordered to be impleaded and a notice had been ordered to be issued to him on 19.07.2007, that is, after passing the order of impleadment of driver, the Claims Tribunal proceeded to examine RW1, RW3 and RW4 without even completing the service of notice on the driver. Even thereafter, the Claims Tribunal continued to proceed with the matter oblivious of the fact that the driver had been ordered to be impleaded and a notice had been ordered to be issued to

him. It was only on 03.11.2008 the presence of Respondent No.3 (Respondent No.7 herein) was recorded. Even at this stage Respondent No.3 (Respondent No.7 herein) who had appeared, for the first time, was not even asked to file the written statement of his defence, very curiously the Respondents' evidence was closed on that very date and the case was fixed for final arguments.

4. It is true that in a Claim Petition presented under Section 166 of the Act, a Claims Tribunal is required to hold an inquiry to award a compensation which appears to be just. The Claims Tribunal was expected to follow the principle of natural justice and at least to permit Respondent No.3 (Respondent No.7 herein), the driver of the offending vehicle, to file his written statement and allow him to cross-examine the witnesses already produced by the Claimants and the Respondents.
5. All the more, all these facts escaped the attention of the Claims Tribunal, even at the time of hearing final arguments and while passing of the impugned judgment. In the circumstances, the impugned judgment cannot be sustained; the same is set aside and the Claim Petition is remanded back to the Claims Tribunal with a direction to give an opportunity to Respondent No.3 (Respondent No.7 herein) to file his written statement and to proceed further with the Claim Petition in accordance with law.
6. Both the Appeals are allowed in above terms.
7. Parties are directed to appear before the Claims Tribunal on 10.12.2012.
8. The amount of compensation, if any, deposited by the Appellant shall be refunded to him/her.
9. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 01, 2012/v