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

% *Judgment delivered on: 27th January, 2014*

+ **MAC.APP. 807/2005**

ORIENTAL INSURANCE CO. LTD. Appellant
Represented by: Mr.Sourabh Kumar Tuteja, Adv.

Versus

PARAS SINGHAL AND ORS. Respondents
Represented by: Mr. Navneet Goyal, Advocate for
Respondents No.1 & 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is directed against the impugned Award dated 30.07.2005 whereby Learned Tribunal granted compensation of Rs. 13,69,568/- with interest @ 9% per annum from the date of framing of the issues, i.e., 21.04.2004 till realisation.

2. It is pertinent to mention that initially, the claim petition was filed under section 163-A of the Motor Vehicles Act and subsequently, it was amended and converted into a petition under section 166 of the M.V. Act.

3. Mr. Sourabh Kumar Tuteja, Ld. Counsel appearing on behalf of the appellant argued that car bearing No. HR-26-2990 had caused the accident, however, the Ld. Tribunal has attributed strict liability on the scooter bearing No. DDP-7020, which was not negligent in any manner.

4. He submitted that on 03.02.1999 at about 6 p.m., respondent No. 3 Dr. Mahendra Kumar was driving the two wheeler scooter No.DDP-

7020; and his wife, the deceased Smt. Mamta Gupta, was the pillion rider on the said scooter. When they reached at Outer Ring Road after Railway Flyover, near Azadpur bye pass, Delhi, a vehicle No. HR-26-2990, being driven rashly and negligently, came from behind and hit the said scooter, due to which the deceased Smt. Mamta Gupta suffered grievous injuries and died at the spot. The driver of the vehicle No. HR-26-2990 fled away from the place of accident along with the vehicle and remained untraced. Initially, the claim petition was filed under Section 163-A of Motor Vehicles Act. Thereafter, the claimants amended the claim petition and converted into under Section 166 of Motor Vehicles Act.

5. Ld. Counsel further submitted that the Ld. Tribunal ought to have appreciated that merely because the record pertaining to vehicle No. HR-26-2990 was not available, the entire liability qua the accident could not have been fastened on the scooter, i.e., the vehicle no. DDP-7020. He further submitted that merely because the deceased happened to be a pillion rider of the scooter, whose death was admittedly caused due to hit by one car no. HR-26-2990 from behind, the driver and the owner of the said scooter cannot be made liable particularly when the claimants failed to prove the rash and negligent driving of the driver of the scooter.

6. Ld. Counsel for the appellant has relied upon the case of ***Surender Kumar Arora and Another vs. Manoj Bisla and others*** (2012) 4 SCC 552 in which the Apex Court has observed as under:-

“9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the

deceased to have established that respondent no.1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. Maybe, in order to help respondent no.1, the claimants had not taken up that plea before the Tribunal. Therefore, the High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum would have come to the assistance of the claimants.”

7. Ld. Counsel submitted that the Ld. Tribunal has wrongly relied upon the case of ***Kaushnuma Begum vs. New India Assurance Co. Ltd. (2001) 2 SCC 9***. He submitted that the said case is applicable to a petition filed under Section 163-A, not to the present petition which has been decided by the Ld. Tribunal under Section 166 of the M.V. Act.

8. On perusal of the record, it is established that the claimants have produced PW1 a police official of Delhi Police, who produced the FIR No. 56/99 of the P.S. Jahangirpuri, Delhi and copy of the same is Ex. PW1/A. PW2 has proved the post-mortem report of the deceased Ex. PW2/A. On the other hand, the appellant insurance company produced an official from the office of the Transport Authority, Gurgaon, Haryana who proved the copy of the report Ex. R1W1/1, with regard to destruction of the record of the vehicle No. HR-26-2990 in fire.

9. PW1 has deposed that charge-sheet in FIR No. 56/99 of PS Jahangirpuri, Delhi was not filed and the case was sent as untraced on 07.07.1999.

10. R2W1 Shri Mahender Kumar has deposed that on 03.02.1999 at about 6 p.m., he was proceeding from Saraswati Vihar, towards Mukarba

Chowk on Outer Ring Road, Delhi by his two wheeler scooter No. DDP-7020 along with his wife Smt. Mamta Gupta as the pillion rider . When they were at a distance of 100 or 150 meters from Mukarba Crossing, one car No. HR-26-2990 came from behind and hit his scooter on its back and as a result thereof he and his wife fell down on the road. Both of them received injuries. His wife being received grievous injuries was removed to a Nursing Home at Jahangirpuri, Delhi where the doctor declared her as dead. He further deposed that after the accident, the driver of the said car along with the car fled away from the spot.

11. It is undisputed that the deceased was not driving any of the vehicles, therefore, she was not at fault. As per the report of the RTO, the record of the car was burnt, therefore, vehicle was not traced and accordingly, the police had filed untraced report.

12. Undisputedly, the car No. HR-26-2990 had hit the Scooter No. DDP-7020 from behind which was driven by Dr. Mahendra Kumar, respondent No. 3 and husband of the deceased. After going through the trial court record, it is revealed that the claimants could not establish the negligence of the driver of the Scooter No. DDP-7020 and the deceased had died due to the negligent act of the driver of the said scooter.

13. It is trite that compensation can be claimed from any of the vehicles involved in the accident. However, if the claim petition is filed under Section 166 of the M.V. Act, then negligence has to be proved. Undisputedly, the present claim petition was considered by the Tribunal under Section 166 of the M.V. Act.

14. In view of the above discussion, I am of the considered opinion that the Tribunal has wrongly granted compensation under Section 166 of the M.V. Act. Accordingly, the impugned award dated 30.07.2005 is set aside.

15. Since the claim sought by the claimants is under the welfare legislation, therefore, I remand back the case to the Ld. Tribunal which shall consider the petition under Section 163-A of Motor Vehicles Act. Since the accident had occurred on 03.02.1999, this Court expects from the Ld. Tribunal to conclude the enquiry as expeditiously as possible, but not beyond 3 months from today.

16. Accordingly, the parties are directed to appear before the concerned Tribunal on 06.02.2014. Trial court record, along with a copy of this judgment, be sent to the concerned Tribunal by Special Messenger.

17. The statutory amount and the award amount deposited vide order dated 20.08.2009 be released in favour of the appellant. However, it is made clear that the interest amount received by the claimants shall not be refunded to the appellant. I further make it clear that the amount of Rs. 1,00,000/- received by the claimants shall be considered by the Tribunal while conducting enquiry under Section 163-A of M.V. Act.

18. Appeal is disposed of accordingly.

SURESH KAIT, J.

JANUARY 27, 2014
RS