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

Decided on: 27th July, 2017

+ MAC.APP. 924/2016 and CM 41304/2016

PRAVEEN KUMAR GARG

..... Appellant

Through: Mr. Ashok Popli, Advocate

versus

SITARAM MEHTO & ORS

..... Respondents

Through: Ms. Sunita Jain for Ms. Vandana
Surana, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant is the registered owner of the truck bearing registration no.HR-74-3407 which was carrying bricks as cargo at the relevant point of time. It appears the truck was moving from the side of Escorts Hospital and had reached near Bagga Link Service Ltd. at about 1.00 a.m. on 01.09.2011. The truck suddenly tilted to its left side and overturned so as to fall on a three wheeler scooter (TSR) bearing registration no.DL-1RK-9812 crushing and damaging it.

2. The owner of the TSR, Sitaram Mehto (first respondent), instituted an accident claim case (suit no.237/14) on 04.12.2012 alleging negligence on the part of the truck driver on the ground it was overloaded due to which it had resulted in the aforementioned mishap.

Damages were sought for the loss suffered on account of the TSR being damaged. The driver of the truck, and its insurer, they being second and third respondents respectively in appeal were also impleaded as respondents in addition to the appellant.

3. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 16.02.2016, upheld the case and awarded compensation in the sum of Rs.1,43,000/- with interest. The insurance company, however, while resisting the case had taken certain preliminary objections including the plea that there was permit violation in that the truck was overloaded and on that basis sought exoneration. The tribunal found it to be a case of breach of the terms and conditions of the insurance company. While the insurer was directed to pay the compensation in the first instance to the claimant, it was granted recovery rights against the appellant, the owner and the driver.

4. In appeal, challenge is brought to the recovery rights primarily on the ground that the aforementioned facts could not have been raised as a valid defence under Section 149 of the Motor Vehicles Act.

5. The tribunal found, on facts, it to have been established that the gross weight of the truck was 16200 kgs, its unladen weight being 6200 kgs and, therefore, it could carry a load maximum of 10000 kgs. As against this, the evidence showed that the cargo carried by the truck was 7000 bricks which would translate to 17500 kgs. This indeed was a case of overloading within the meaning of the penal clause contained in Section 113 read with Section 194 of the Motor Vehicles Act, this besides it being an act endangering human life and

thus also a penal offence under Section 336 of Indian Penal Code, the police having registered a crime vide FIR (Ex. PW1/6) in such regard.

6. The appellant relies on the decision of the Supreme Court in *National Insurance Co. Ltd. Vs. Reena Devi and Ors.*, 2013 ACJ 1195 and of the *High Court of Madhya Pradesh in Ramnath Vs. Prasanna Kumar Jain and Ors.*, 2003 ACJ 1011. The decision in *Reena Devi and Ors* (supra) does not assist in as much as it is clear from para 9 of the report that it had been found, on facts, that the vehicle was not carrying passengers more than the permitted capacity. Therefore, the effect of overloading did not even arise as a consideration.

7. In *Ramnath* (supra), the overloading of the vehicle was found to be on account of the fact that most of the occupants were small children who could not have been left out when the purpose of the journey was to attend a marriage. It is in that context that the Madhya Pradesh High Court ruled that the insurance company could not present it as a ground to seek exoneration. There is no discussion in the judgment vis-à-vis the effect of the violation of the permit conditions in the context of Section 149 of the Motor Vehicles Act.

8. This court does not accept the argument of the appellant that the violation of permit condition on account of overloading in the manner found here cannot be treated as breach of the terms and conditions of the insurance policy. It is inherent in a motor vehicle insurance contract that the registered owner (the insured) will abide by the law regulating the use of the motor vehicle on public road. The inhibition against overloading is one of the obligations under the law, reference being made to Section 113 of the Motor Vehicles Act. As noted

earlier, the breach of the said provision leads to commission of an offence prescribed in law. It cannot be allowed to be argued that the use of a motor vehicle in a manner amounting to commission of a penal offence is also to be ignored.

9. Section 149(2)(a)(i)(c) refers to violation of the permit conditions. Though the said clause refers to “*for a purpose not allowed by the permit*”, such expression cannot be construed in a restrictive manner so as to lead to the interpretation only that a goods vehicle cannot be used for transporting human beings or a vehicle meant to be used as transportation of human beings cannot be used conversely for carrying goods. The word “*purpose not allowed*” means the limitations within which the purpose for which the vehicle is allowed to be used and that brings in the maximum load such vehicle can lawfully carry.

10. For the foregoing reasons, the view taken by the tribunal cannot be faulted.

11. The Tribunal while making the award has included not only the amount of Rs.1,20,000/- which was incurred as expenditure towards repairs but also Rs.13,000/- towards loss of income and Rs.10,000/- as damages towards harassment and agony. The appellant is also aggrieved with the inclusion of the said damages on account of loss of income and harassment and agony. It is the argument of the learned counsel that these could not have been included since the jurisdiction of the tribunal was only to compensate for the damage to the property. He referred to the expression “*damages to any property*” appearing in

Section 165(1) and the words “*by the owner of the property*” appearing in Section 166(1) of the Motor Vehicles Act.

12. In the opinion of this court, the argument raised is wholly meritless. It is “*damages*” which are to be awarded on account of damage to the property. The damages do not mean only the value of the property. It has to be borne in mind that the property damaged in the case was a TSR which was the source of livelihood for the claimant. The fact that it was crushed under a heavy goods vehicle and the fact that it required extensive repairs before it could be restored to a condition where it could be again brought on road shows that for substantial period the owner was rendered deprived of the source of his livelihood. This element had to be borne in mind and has been rightly taken care of by the tribunal in the impugned judgment. The loss of income and harassment and agony suffered have a direct link to the damage of the property.

13. For the foregoing reasons, the appeal, being devoid of substance, is dismissed. The pending application also stands dismissed.

14. The learned counsel for the appellant submitted that the amount paid by the insurance company has already been reimbursed by requisite deposit with the tribunal. If the recovery rights of the insurance company have been satisfied, upon proof to that effect being shown, the statutory amount shall be refunded.

R.K.GAUBA, J.

JULY 27, 2017/yg