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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 19th August, 2015

+ MAC.APP. 108/2013

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. S.L.Gupta, Advocate with
Mr. Ram Ashray, Advocate.&
Mr. Vikash Chandra, Advocate

versus

RAM LAL SAHU & ORS. Respondents

Through: Mr. S.K.Tiwari, Advocate

+ MAC.APP. 116/2013

NEW INDIA ASSURANCE CO.LTD. Appellant

Through: Mr. S.L.Gupta, Advocate with
Mr. Ram Ashray, Advocate.&
Mr. Vikash Chandra, Advocate

versus

RAM LAL SAHU & ORS. Respondents

Through: Mr. S.K.Tiwari, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. Both these appeals have been filed by the appellant New India Assurance Company Limited against the impugned award dated

30.10.2012 passed by the learned Motor Accident Claims Tribunal (MACT).

2. The main contention of the learned counsel for the appellant is that they must be given the right to recover the compensation award amount from owner of the truck at the time of the accident or alternatively from the owner of the truck at the present time, namely, Sureh Kalra and Om Prakash Mishra, respondents No.6 and 7 to the appeal.

3. The contention of the learned counsel for the appellant is that although the appellant Insurance Company has been fastened with the liability of payment of compensation on account of the fact that it was the insurer of the Tata Sumo in which the deceased and the injured were travelling but the accident had taken place of the insured vehicle, namely, Tata Sumo with a truck bearing registration No.UP-78T-0223 against which a FIR was registered by the police of District Court Faizabad, U.P. It has been contended that after this FIR was registered, the Claimants had amended the Claim Petition impleading the owners of the truck also as a party. It has been now contended by the learned counsel that since the accident had taken place on account of the negligence on the part of the truck driver, therefore, they ought to have been given right to

recovery from the owners of the truck. In any case, it has been contended that even if the complete right of recovery is not given to the appellant Insurance Company from the owner of the truck, at least there is a case of contributory negligence on both the parties, i.e. Tata Sumo driver as well as the truck driver which resulted in injuries to the Claimant and the death of the deceased in MAC APP.116/2013 and 108/2013 respectively. Therefore, it is contended that the appellant may be given right to recover the amount of compensation from the owners of the truck.

4. I have considered the submission of the learned counsel for the appellant Insurance Company.

5. The learned counsel for the appellant has not been able to show any stand in this regard having been taken by them before the learned MACT. It is not in dispute that the Claim Petition was amended by the Claimants and the injured. When the Claim Petition was amended, the Insurance Company must have been given right to file its amended written statement which has chosen not to exercise the said right and therefore, no such plea of right to recovery was taken or plea of contributory negligence was ever taken by the appellant before the learned MACT. Further, if a plea is not averred than no amount of proof which may be

produced by a party before the Court during the time of recording of evidence can be taken cognizance of. In the instant case not only this fact has not been averred but even no iota of proof with regard to shifting of liability to the truck driver for their negligence contributory or otherwise was ever set up by the appellant. Therefore, there was complete absence of any production of evidence on the part of the appellant-Insurance Company. Moreover, even during the course of arguments before the learned MACT no such plea was taken. Under these circumstances, now to urge this plea for the first time before the Appellate Court that they must be given right to recovery is totally untenable in the eyes of law.

6. I am constrained to observe what has been stated by the learned MACT in Para 14 of the impugned award, which reads as under:-

“14. The insurance company did not lead any evidence. The insurance company did not put even a single suggestion to the petitioner that the petitioner or his wife, the deceased had borrowed the Tata Sumo from their son, respondent no.2. Even in the written statement filed by respondent no.3, it is not averred that deceased (in petition no.448/10) and petitioner (in petition no.454/10) had borrowed the vehicle from their son/respondent no.2. The insurance company failed to lead any evidence to show that the vehicle was borrowed by the deceased or by the petitioner from the owner. There is absolutely no evidence on this point. There were some other relatives of the petitioners in the said vehicle. It is not clear who had borrowed the vehicle from the respondent no.2 or if

respondent no.2 had handed over his vehicle to driver for taking all the persons to Delhi. The mother and father of the respondent no.2 were the occupants of the car. In the absence of any specific evidence, it cannot be said that mother and father of the owner of the car had borrowed the vehicle from their son and had stepped into the shoes of their son. There is nothing on record to show that deceased and petitioner (in petition no.454/10) were not falling under the definition of third party. The petition is therefore maintainable. The issue no.1 is therefore decided in favour of petitioners and against the respondents.”

7. In view of the aforesaid observations passed by the learned MACT and the fact that this was not a case which was set up by the appellant-Insurance Company either in the pleadings or proved by the appellant before the learned MACT, no cognizance of the same can be taken but it is only an afterthought and the plea of the appellant is without any merit and accordingly, the same is dismissed.

8. Since the plea itself is dismissed, therefore, the present appeals do not have merit in consideration and the same are also dismissed.

V.K. SHALI, J.

AUGUST 19, 2015

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