

\$-41

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

+ **MAC.APP. 303/2007**

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through Mr. Pankaj Seth, Advocate with
Ms. Neha Duggal, Advocate

versus

CHANDER PAL SINGH & ORS. Respondents

Through Mr. G.P. Thareja, Advocate
with Mr. Satyam Thareja,
Advocate for Respondents no.1
to 4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

ORDER

05.03.2015

1. This appeal is directed against the judgment dated 06.02.2007 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby compensation of Rs.5,00,000/- was granted in favour of Respondents no.1 to 4 for the death of Kapil Kumar who suffered fatal injuries in a motor vehicular accident which occurred on 20.03.2005.
2. It is urged by the learned counsel for the Appellant (ICICI Lombard General Insurance Co. Ltd.) that the Appellant is not

liable to pay the compensation at all as deceased Kapil Kumar himself was driving the vehicle at the time of the accident. He stepped into the shoes of the owner and he not being a third party, the Appellant is not liable to pay the compensation. Reliance is placed on *Ningamma & Anr. v. United India Insurance Co. Ltd.*, (2009) 13 SCC 710 and *Oriental Insurance Co. Ltd. v. Rajni Devi & Ors.*, (2008) 5 SCC 736. It is urged that if the accident was caused on account of some mechanical defect in the vehicle the risk was not covered.

3. On the other hand, the learned counsel for Respondents no.1 to 4 states that by an order dated 22.04.2006, the Respondents had not given any consent to convert the petition to one under Section 163-A of the Motor Vehicles Act, 1988. It was the Claims Tribunal itself who converted the petition *suo moto* under Section 163-A and then proceeded to award the compensation. It is stated that the issue of negligence was not even framed by the Claims Tribunal. It is urged that the impugned order cannot be sustained.
4. I am in agreement with the learned counsel for the Respondents (the Claimants) that the Claims Tribunal was not entitled to *suo*

motu convert the Petition under Section 166 to one under Section 163-A of the M.V. Act. The impugned order therefore cannot be sustained.

5. Since this was a petition under Section 166 of the Motor Vehicles Act, 1988, the Claims Tribunal shall proceed and frame an issue if the accident was caused on account of negligence of the driver or the negligence of the owner of the vehicle and will thereafter proceed to determine the compensation.
6. The parties are directed to appear before the Claims Tribunal on 23.03.2015.
7. The Claims Tribunal shall endeavour to dispose of the claim petition within three months of the date of the appearance of the parties.
8. It may be noted that operation of the judgment dated 06.02.2007 was stayed by an order of this Court dated 22.05.2007. Subsequently, by an order dated 08.09.2009, the awarded amount of Rs.5,00,000/- was ordered to be deposited with UCO Bank, Delhi High Court Branch, New Delhi and a sum of

Rs.50,000/- was ordered to be released to Respondents no. 1, 2 and 4 by transferring the said amount to their Saving Bank Account. If the amount has not been released, the same shall not be released to the Respondents. If any amount has been released, it shall be subject to the orders that may be passed by the Claims Tribunal. No further amount shall be released to the Respondents.

9. The amount deposited along with interest and the interest accrued during the pendency of the appeal shall be released to the Appellant Insurance Company forthwith.
10. The statutory amount, if any, deposited shall also be released to the Appellant Insurance Company.
11. Copy of the order be given *dasti* to the parties.

(G.P. MITTAL)
JUDGE

MARCH 05, 2015
pst