$~7,8, 9 & 10

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

*Date of decision: 3rd February, 2015*

\+ **MAC.APP. 298/2012**

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr. D.D. Singh, Adv. with Mr. Navdeep Singh, Adv.

versus

JAY DEVI & ORS ..... Respondent
Through: Mr. Varun Goswami, Adv. with Ms. Tanuja B., Adv.

\+ **MAC.APP. 332/2012**

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr. D.D. Singh, Adv. with Mr. Navdeep Singh, Adv.

versus

JAY DEVI & ORS ..... Respondents
Through: Mr. Varun Goswami, Adv. with Ms. Tanuja B., Adv.

\+ **MAC.APP. 343/2012**

BABY MEHAK BATRA ..... Appellant
Through: Mr. Varun Goswami, Adv. with Ms. Tanuja B., Adv.

versus

SYAL TRANSPORT CO & ORS ..... Respondents
Through: Mr. D.D. Singh, Adv. with Mr. Navdeep Singh, Adv. for R-3.

\+ **MAC.APP. 345/2012**

BABY MEHAK BATRA ..... Appellant
Through: Mr. Varun Goswami, Adv. with Ms. Tanuja B., Adv.

versus

SYAL TRANSPORT CO & ORS ..... Respondents

Through: Mr. D.D. Singh, Adv. with
Mr. Navdeep Singh, Adv. for R-3.

**CORAM:**
**HON'BLE MR. JUSTICE G.P.MITTAL**

***G. P. MITTAL, J. (ORAL)***

1. These four appeals (MAC.APP.298/2012, MAC.APP.332/2012, MAC.APP.345/2012 and MAC.APP. 343/2012) relate to a motor vehicular accident which occurred on 02.12.2005 wherein Rakesh Batra and his wife Cheena Batra succumbed to fatal injuries. Two claim petitions each were filed by Jay Devi and Tara Chand, parents of Rakesh Batra and by baby Mehak, the minor daughter of deceased Rakesh Batra and Cheena Batra. It is stated that Jay Devi has since expired. Since husband of Jay Devi, namely Tara Chand is already on record and the minor child of the deceased Rakesh Batra and Cheena Batra is also on record, name of Jay Devi is ordered to be deleted from the array of the parties. Necessary deletion has been carried out by the Court Master under his signatures today itself.

2. By impugned judgment dated 20.12.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) compensation was

awarded in favour of the Claimants *i.e.* Jay Devi, Tara Chand and Baby Mehak Batra. Jay Devi and Tara Chand are the parents of deceased Rakesh Batra and parents-in-law of deceased Smt. Cheena Batra. Baby Mehak Batra is the daughter of the deceased Rakesh Batra and Smt. Cheena Batra.

3. MAC APP.298/2012 and MAC APP.332/2012 have been filed by the Appellant United India Insurance Company Limited disputing the liability, whereas MAC APP. 343/2012 and MAC APP.345/2012 have been filed by Baby Mehat Batra for enhancement of compensation.

4. Both husband and wife lost their lives in the unfortunate accident which occurred on 02.12.2005. The FIR in relation to the accident was recorded on 03.12.2005 on the complaint of Mr. Ashok Tandon, who is the father-in-law of Rakesh Batra and father of Cheena Batra.

5. In the complaint made to the police, it is stated that the accident had taken place on 03.12.2005 at about 1:40 a.m. The Claims Tribunal, however, opined that the FIR in the case was recorded at 1:40 a.m. on 03.12.2015 and therefore, the accident must have taken place before 12:00 hours in the night. The precise time of the accident is not normally very relevant in the claim cases. However, in the instant

case, the policy issued by the United India Insurance Company Limited, which has been placed on record was valid for the period from 03.12.2004 to the mid-night of 02.12.2005. Therefore, the precise time of accident is of great import.

6. No eye-witness was examined in the case. It is very intriguing to note that the site plan and other circumstantial evidence were also not placed on record to throw light on the aspect of negligence. The Claims Tribunal simply on the basis of the postmortem report and the registration of criminal case opined that there was negligence on the part of the driver of the truck bearing registration no.HR-47-4507.

7. In view of the judgments of the Supreme Court in *Oriental Insurance Company Limited v. Meena Variyal (2007) 5 SCC 428* and *Deepal Girishbhai Soni v. United India Insurance Company Limited, (2004) 5 SCC* 385, it is incumbent on a Petitioner claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (the 'Act') to prove that the accident was caused on account of rash and negligent act of the driver of the offending vehicle. It is very unfortunate that the aspect of negligence and precise time of the accident were not gone into appropriately by the Claims Tribunal in the present case. A perusal of the FIR which has been placed on record simply states that the

accident took place at about 1:40 a.m. Therefore, the Claims Tribunal was not right in observing that the FIR was recorded at 1:40 a.m. It was the duty of the Claimants as also of the Claims Tribunal, who is expected to hold an inquiry under Section 166 of the Act for awarding just and reasonable compensation in appropriate cases, to have summoned the eye witnesses and if eye witnesses were not there, then to summon the investigating officer as well as the record of the criminal court including the site plan, mechanical inspection report, *etc.* to enquire if negligence on the part of the driver and precise time of the accident were proved.

8. In view of this, the impugned judgment cannot be sustained; the same therefore, has to be set aside.

9. By an order dated 21.03.2012, on deposit of the award amount along with upto date interest with the Registrar General of this Court, the execution of the award was stayed. Subsequently, in pursuance of the order dated 21.10.2013, a part of the awarded amount was ordered to be released.

10. I may, at this stage, note that the Claims Tribunal shall not be bound by the quantum of compensation which has been awarded or the

liability of the Insurance Company/owner/driver of the vehicle. The Claims Tribunal shall be obliged and at liberty to go into all the aspects afresh including the amount of compensation.

11. Since the accident occurred in the year 2005 and these appeals were filed in the year 2012, it is directed that the Claims Tribunal shall endeavor to dispose of all the Claim Petitions expeditiously and in any case within a period of six months from the date of first appearance before the Claims Tribunal.

12. All the parties are directed to appear before the Presiding Officer, Motor Accident Claims Tribunal, Patiala House Courts, New Delhi on 25.02.2015. It is expected that all the parties shall co-operate in expeditious disposal of the claim petitions.

13. The amount deposited with the Registrar General of this Court shall be refunded to the Appellant United India Insurance Company Limited. Statutory amount, if any, shall also be refunded to the Appellant Insurance Company.

14. The amount already released to the Claimants shall be subject to the final orders that may be passed by the Claims Tribunal. It is clarified that no further amount shall be released.

15. *Dasti* also.

**(G.P. MITTAL)**
**JUDGE**

**FEBRUARY 03, 2015**
vk