

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

Date of decision: 12th March, 2015

+ **MAC.APP. 735/2007**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr.A.K. De, Advocate with
Ms. Rubbeka Dias, Advocate

Versus

REKHA DEVI & ORS. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

**MAC.APP. 735/2007 & CM.APPL 17718/2007(stay) & CM.APPL
20219/2014(for deletion of respondent no.13)**

1. This appeal was preferred against the judgment/award dated 07.09.2007 of the MACT in Petition no.183/07(Old no.242/05). It is *inter alia* the contention of the appellant in the memorandum of appeal that though vide the impugned judgment/award, its liability for the compensation awarded had been apportioned as 15% only of the total compensation awarded, the remaining liability being of others, nevertheless the claimants / respondents no.1 to 10 have been permitted to recover the entire compensation amount of Rs.5,59,000/- from any of the parties/persons who were held liable including the appellant, with right to whichever party from whom the amount in

excess of its / his / her liability has been recovered, recover the excess amount from the others held liable.

2. Notice of the appeal was issued and subject to deposit of 15% of the award amount with the Registrar General of this Court, the operation of the impugned award was stayed.

3. The appeal has remained pending for the last eight years for service of the respondents. On 10.05.2011, it was reported by the Registrar that service of all the other respondents, except respondent no.13 Smt. Parminder Kaur, stood effected and that the appellant had failed to take steps for service of respondent no.13 by publication inspite of repeated opportunities. Accordingly the matter was put up before the Court. However, when the matter came before the Court on 26.07.2011, on the statement of the counsel for the appellant that the appellant will furnish fresh address of respondent no.13, the matter was again relegated to the Registrar for service of respondent no.13 at fresh address. The appellant, however failed to furnish any fresh address of respondent no.13 and also did not effect publication. Again, the matter was posted before the Court. Vide order dated 22.08.2014, a final opportunity was granted to the appellant to take

steps for completion of service on respondent no.13 subject to payment of costs of Rs.10,000/-. However on 25.11.2014, on the statement of the counsel for the appellant before the Registrar that he intends to delete respondent no.13 from the array of respondents, the appellant was given opportunity therefor. The counsel for the appellant, on inquiry, states that the cost of Rs.10,000/- also has not been paid. CM.APPL 20219/2014 has since been filed for deletion of respondent no.13 from the array of respondents at the risk of the appellant.

4. Finding, that the appellant after procuring ex parte stay of the award, nearly eight years ago, subject to deposit of 15% of the award amount has been so delaying the matter, the counsel for the appellant has been asked to address arguments on the merits of the appeal. None appears for the respondents. A perusal of the earlier ordersheets shows that in response to the notice of the appeal issued to the remaining respondents who all are reported to be served, only the counsels for respondent no.14 *i.e.* Ritco Transport Company had appeared from time to time and that none of the other respondents entered appearance at any point of time. Today, none appears on

behalf of respondent no.14 also. The respondents, other than respondent no.13, are thus proceeded against ex parte.

5. The only ground on which the appeal was preferred being as aforesaid, the counsel for the appellant has been heard thereon. He has contended that the liability of the appellant in the total compensation amount having been restricted to 15% of the awarded amount, there was no justification for the Tribunal to entitle the claimants to recover the entire compensation amount from whichever judgment debtor. It is further contended that though the appellant as an insurance company would be entitled in law to recover the amount from the insured with whom it has a privity of contract but would not be able to recover the monies in excess of its liability from other judgment debtors who have been held liable for the compensation.

6. Attention of the counsel for the appellant has been invited to *National Insurance Co. Ltd. Vs. Kusum Rai* (2006) 4 SCC 250 where the Supreme Court had similarly directed the entire awarded amount to be recovered from the insurance company with liberty to the insurance company to recover the said amount from the insured.

7. The counsel for the appellant however seeks to distinguish the said judgment by contending that in that case the right of recovery of the insurance company was from the insured and not from the strangers as would be the case in the present facts.

8. I am unable to see the difference. The Tribunal in the impugned award / judgment has vested the judgment debtor/s including the appellant from whom the awarded amount in excess of individual liability is recovered with a right to recover the excess amount from the other judgment debtors. The said judgment / award is binding on all the judgment debtors. Even otherwise, for such a claim to be made, no privity of contract is required. Such a right to recover the excess amount recovered would accrue to the appellant even under the law inasmuch as the liability of the appellant and other judgment debtors, inspite of apportionment has been held to be joint and several *vis-a-vis* the claimants. Reference in this regard may be made to Section 43 of the Indian Contract Act, 1872.

9. I may also note that a direction, making the awarded amount recoverable from the Insurance Company beyond its liability and with right to Insurance Company to recover the share from other judgment

debtors has been felt necessary with regard to the nature of the statute. The said provisions of the Motor Vehicles Act, 1988 are intended to provide immediate relief to the victims of a motor vehicle accident. It is unfortunate that the instant appeal entailing this limited question has remained pending for nearly eight years.

10. I have enquired from the counsel for the appellant whether the claimants have initiated any proceedings for execution of the judgment / award beyond / in excess of 15% deposited in this Court. It has further been enquired whether any other appeal has been preferred against the impugned award / judgment. The answer to both the queries is in the negative.

11. The counsel for the appellant at this stage when this judgment is being dictated states that he had no knowledge in this regard.

12. There is another aspect. The appellant is now seeking to delete respondent no.13 from the array of parties. It has been enquired from the appellant whether respondent no.13 was a necessary party to the appeal or not. The counsel for the appellant states that respondent no.13 was a necessary party being the insured of the appellant. I may

however notice that in the impugned judgment / award it has been specifically provided that the appellant having not proved any breach of the terms and conditions of the insurance policy by the respondent no.13, the recovery proceedings shall not be initiated against respondent no.13. It has been further enquired from the counsel for the appellant whether not this appeal itself would not be maintainable upon the appellant deleting respondent no.13 who is stated to be a necessary party. The counsel for the appellant states that the appeal would become infructuous only to the extent of 15% which has been awarded against the appellant. However, that liability was never disputed in the appeal. This appeal is liable to be dismissed on this ground as well.

13. The appeal is accordingly dismissed. Pending applications also stand disposed of.

14. The respondents having not contested the appeal, no costs.

15. The amount deposited by the appellant in this Court with interest accrued if any be released to the claimants in terms of the award / judgment of the Tribunal.

16. Statutory amount if any deposited by the appellant be refunded to the appellant insurance company.

RAJIV SAHAI ENDLAW, J.

MARCH 12, 2015

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