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

+ RFA 514/2014

RAJU GAS SERVICE ..... Appellant

Through: Mr Rakesh Dahiya, Adv.

versus

SAROJ BALA & ORS ..... Respondents

Through: Mr R.K. Kohli & Ms Mamta Pal, Adv.  
for R- 1 to 3.

Mr Pradyuman Dubey, Adv. for R-4.

Mr Pankaj Seth, Adv. for R-5.

+ RFA 619/2014

HINDUSTAN PETROLEUM CORPORATION  
LIMITED

..... Appellant

Through: Mr Pradyuman Dubey, Adv.

versus

SAROJ BALA & ORS. .... Respondents

Through: Mr R.K. Kohli & Ms Mamta Pal, Adv.  
for R- 1 to 3.

Mr Rakesh Dahiya, Adv. for R-4.

Mr Pankaj Seth, Adv. for R-5.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

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**10.09.2015**

1. These are appeals directed against a common judgement and decree dated 30.07.2014 rendered by the Addl. District Judge, Rohini Courts, Delhi. The appeal bearing RFA No. 514/2014 has been filed by the distributor of the other appellant, whose appeal is numbered as RFA No. 619/2014. For the sake of convenience, I would be referring to the appellant

in RFA 514/2014 i.e. Raju Gas Service, as RGS, while the appellant in RFA No. 619/2014, i.e. Hindustan Petroleum Corporation Limited, as HPCL.

2. Briefly, the facts obtaining in the case are as follows:

2.1 Respondent no.1 and 3 in both the appeals were the original plaintiffs in the suit filed before the trial court for damages. Respondent no.1 is, one, Ms Saroj Bala, while respondent no.2 and 3 are her children, namely, Deepak and Suraj. I am informed that respondent no.2 has attained majority, while respondent no.3 is still a minor.

2.2 Respondent no.1, it appears, had sought supply of a domestic fuel from RGS. The RGS, accordingly, supplied a gas cylinder at the residence of the respondent no. 1 to 3. On 12.03.2008, when respondent no.1 attempted to light the stove, which was connected to the gas cylinder, a fire erupted which engulfed not only respondent no.1, but also respondent no.2 and 3, and her husband, namely, Mr Rajender Singh.

2.3 To be noted, in the suit, Mr Rajender Singh, was not arrayed as a party.

2.4 On account of the said fire, burn injuries were suffered by respondent no.1 to 3. The respondents were also admitted to a hospital. In fact, respondent no.1 undertook treatment in various hospitals; the details of which are set out in the impugned judgement.

3. The trial court, by virtue of the impugned judgement, has returned findings of fact which establish the liability of the two appellants i.e. RGS and HPCL, and also the two insurance companies which were also arrayed as parties in the action filed before the trial court i.e. respondent no.5 and 6. Respondent no.5 is the National Insurance Company Ltd., while respondent no.6 is United India Insurance Company Ltd. Respondent no.5 is

represented by Mr Seth, whereas there is no representation on behalf of respondent no.6. Pertinently, none of the insurance companies have filed an appeal to assail the impugned judgement and decree.

4. The trial court has in the concluding part of the judgement come to the following conclusion, based on the evidence led before it:

“.....11. After considering all the above mentioned judgements so relied upon by the parties respectively, it is reflected that the judgement of Madhuri Govilka (supra) is directly applicable upon the present facts and circumstances. Defendants No. 1 and 3 have tried to create confusion about the date of delivery of cylinder to the plaintiff. Defendants themselves have not been able to produce the relevant record after 06.02.2008. Defendants no. 1 & 3 themselves have stated at one point that the record of supplying the cylinder is normally kept by them for about six months, however, they have stated that it has been destroyed. No explanation has been furnished as to why such record has been destroyed within one or two months. The most relevant aspect to be considered by this court is that there was no mishandling by the plaintiff while using the said cylinder on that fateful day. Whether the cylinder was supplied on 06.02.2008 or 12.03.2008, does not become that much relevant for the reason that till 12.03.2008 there was no such incident. In the case of Madhuri Govilka (Supra) this fact was also considered by the court. In that case, the cylinder was supplied on 12.08.1995 and the incident occurred on 26.08.1995. The defendants have not been able to show anything to the contrary that there was no manufacturing defect in the cylinder/ regulator and it was perfectly all right. This assumption is further strengthen with the fact that when the cylinder in question was taken by the manufacturer for filing its report regarding its defectiveness, such report was never filed nor has been filed till date. Therefore, the judgement of Madhuri Govilka (supra) is directly applicable in the present facts and circumstances.

12. With these observations, therefore, I am of the considered opinion that defendants no. 1 & 2 are primarily liable to the damages and losses as well as mental agony including physical pain and suffering by the plaintiff no.1, who also became physically disabled to the extent of 52% for which she has discharged the burden proving thereof by examining the concerned witness, and by the minor children of plaintiff no.1.

Coming to the liability of defendants no. 3 and 4, the policy entered into with defendant no.2 is filed on record by them. It is stated by defendant no.3 that they are liable only to the extent of terms and conditions mentioned in the policy itself. It is pertinent to mention here that as per the law of insurance the terms and conditions of any policy are relevant only in between the defendant no.2 on the one hand and defendant no. 3 and 4 on the other hand for which plaintiff has no concern. The concern of the plaintiff as mentioned in the plaint itself to seek compensation and damages. Whether it is a liability of defendants no. 1 and 2 only or through them it is the liability of their insurance company, it depends upon the negligence of defendants no. 1 & 2. If defendants no. 1 & 2 are considered to be negligent, as they have been considered accordingly, then plaintiff is entitled for the compensation and damages.

Coming again to the liability of defendants no. 3 & 4, it is pertinent to mention here that under the guise of terms and conditions of standard contract, the insurance company can not escape its liability towards the public at large. Such terms and conditions of standard contract can not be considered and interpreted to the greatest disadvantage of the public at large. The object of the contract of insurance is that the person who is having a bigger pocket can share the burden of payment easily as he has been enjoying the fruits by providing the insurance to its customers. It is, therefore, always considered that the liability in such cases where there is an insurance and where there is fault of the person towards his negligence and his own conduct towards its consumer then all the persons including their insurance

companies should be answerable and made liable to the public at large. Therefore, I am of the considered opinion that such liability of defendant no. 1 & 2 is also extended to defendants no. 3 & 4.

Hence all the defendants are liable to pay damages and compensation to the plaintiff....”

(emphasis is mine)

5. As would be evident on a perusal of the aforesaid extract, the trial court has held that the two appellants, who were impleaded as defendant no.1 and 2 in the suit, as being primarily liable for damages and loses as well as for mental agony and physical pain suffered by respondent no.1 and her children i.e. respondent no. 2 and 3.

5.1 Furthermore, because the loses, likely to be suffered on account of third party claims, were insured by respondent no. 5 and 6, the trial court has held all defendants liable for payment of damages and compensation.

5.2 However, in the operative part of the impugned judgment, the trial court has issued the following directions:

“..... It is pertinent to mention here that the plaintiff himself has asked for the compensation upto Rs. 10 lacs. In these circumstances, as the plaintiffs have been able to establish their case against the defendants, they are entitled for the compensation of Rs. 10 lacs by way of damages against the defendants no. 1 & 2 who are primarily liable for the payment to them. Defendant no. 1 & 2 are directed to pay the said amount within two months from the date of order. It would be opened to defendant no. 1 & 2 to recover the said amount from their respective insurance companies i.e. defendants no. 3 & 4 accordingly. The interest @ 12% from the date of filing of the suit till its recovery is also granted accordingly, alongwith the cost of the suit.....”

6. It is because of the operative directions, that the appellants are

principally aggrieved. The learned counsels for the appellants i.e. RGS and HPCL have conveyed to me that as long as respondent no. 5 and 6 are called upon to pay third party claims under the policy, they would have no difficulty in accepting the liability owed by them to respondent no. 1 to 3, as found by the trial court vide the impugned judgement.

6.1 I am informed by Mr Seth, who appears for respondent no.5 that the liability under the policy of respondent no.5 is limited to a sum of Rs. 10 lacs. This fact is not disputed by the learned counsel for the RGS.

6.2. In view of the fact that the liability of respondent no.5 is limited to a sum of Rs. 10 lacs, learned counsel for RGS submits that the liability towards the balance amount should be borne by the other appellant i.e. HPCL. Learned counsel for the HPCL is agreeable to this suggestion.

7. Having regard to the submissions made before me by the learned counsel for the parties, the impugned judgement and decree is varied only to the following extent in view of the fact that respondent no.5 and 6 have not preferred any appeal.

7.1 The liability imposed in terms of the impugned judgement and decree will be initially defrayed by the RGS. Upon RGS lodging a claim with respondent no.5, respondent no.5 will reimburse the amount paid, to RGS, within a period of two weeks of lodgement of the claim in terms of the policy. In the event there is any deficiency qua the amount which is owed to respondent no. 1 to 3, the same will be paid by the HPCL. As in the case of respondent no.5, respondent no.6, upon lodgement of a claim by the HPCL, in the terms of the policy, will reimburse the amount to HPCL within two weeks of the claim being lodged.

7.2 Accordingly, it is directed that, while the RGS will pay the entire

decretal amount, in the first instance, the HPCL will reimburse to the RGS the amount paid by it to respondent no. 1 to 3 over and above the sum of Rs. 10 lacs.

8. In these circumstances, learned counsel for the RGS agrees that the money deposited with the registry of this court be released to respondent no.1.

9. It is ordered accordingly. For this purpose, list before the Registrar General on 16.09.2015. The appeals are, accordingly, disposed of.

10. Dasti.

**RAJIV SHAKDHER, J**

**SEPTEMBER 10, 2015**

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