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

Date of Decision: 06.05.2016

\+ MAC.APP. 17/2013

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj Gupta, Advocates

versus

NEMKHANVUNG & ORS. ..... Respondents

Through: Mr. Vivek Gupta and Mr. Pawan Kumar, Advocates for R-2 & R-3

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Admittedly, a motor vehicular accident took place at about 2.30 p.m. on 05.10.2008 at Mehrauli-Badarpur Road near Asian Market, Pushp Vihar, New Delhi wherein, H. Haumuan Lal, a sepoy with 10 Assam Regiment moving on foot, was hit by a motorcycle bearing registration no.HR-99-CG Temp 0971 (offending vehicle) and died the next day in hospital due to the injuries suffered. The offending vehicle was admittedly owned by the third

respondent and again admittedly was being driven at the relevant point of time by the second respondent.

2. It appears from the evidence on record that the delivery of the motor vehicle (newly purchased) had been taken by the registered owner a few hours prior to the occurrence. It may also be noted here that the second respondent (driver) concededly was holding only a learners' driving license at the relevant point of time. The vehicle is admittedly subject to an insurance policy against third party risk, duplicate copy of the policy document produced on record by the insurance showing it to have been issued at 4.05 p.m. on 05.10.2008.

3. The first respondent (claimant, wife of the deceased) instituted an accident claim case (suit no.1062/2010) under Sections 166 and 140 of Motor Vehicles Act, 1988 (M.V. Act) on 03.03.2009 impleading the above said driver, owner and insurer as respondents. The tribunal held inquiry and, by judgment dated 22.09.2012, upheld the case that the accident had occurred due to the negligent driving of the offending vehicle. It assessed the compensation payable in the case at Rs.17,19,600/- and made an award accordingly, directing the insurer to pay with interest at the rate of 9% p.a. from the date of filing of the petition.

4. During the inquiry before the tribunal, the insurance company had taken the plea that it was not liable since the insurance cover commenced only with effect from 4.05 p.m. of 05.10.2008, while the accident had occurred at 2.30 p.m. It also pleaded that the driver having held a learners' driving license, there being no other person holding a valid driving license

accompanying him, there was a breach of the terms and conditions of the insurance policy.

5. The driver and owner resisted the above contentions. Their plea was that the delivery of the vehicle having been taken earlier, the driver was accompanied by the owner who indisputably held a valid driving license and further that the cover note had been issued earlier by the representative of the insurer at the showroom of the dealer from where delivery of the motor cycle had been taken around noon time and that premium had been paid at that stage. Both the above mentioned contentions of the driver and owner were accepted by the tribunal and, thus, the plea for exoneration raised by the insurer was rejected.

6. By the appeal at hand, the insurer reiterates the above noted two defences. Having heard the arguments and having gone through the record, this court finds the appeal to be unmerited.

7. No evidence was led by the insurer in support of the claim that a legal notice had been issued to the owner to produce the original insurance policy document. Concededly, the duplicate copy of the insurance policy relied upon by the insurer had been issued after the event, with a gap of several days. The plea of the owner based on the cover note, thus, has been rightly dealt by the tribunal and the finding does not call for any disturbance.

8. During the inquiry, the claimant had relied upon eye witness account of H Const. Dayaram (PW-2), a local police official who was present at the scene on patrolling duty; this, in addition to the word of the investigating police officer (R1W2). Without doubt, in his testimony, PW-2 spoke only

of the motorcycle rider (second respondent), but then, during cross-examination, he was unable to deny the presence of the pillion rider with him. The sequence of events indicates that the delivery of the motorcycle had been taken only a few hours prior to the occurrence. If it were so, it is legitimate to presume that the registered owner of the vehicle, he being the purchaser, would have been present at the time of delivery. Since the motorcycle was on its way immediately thereafter on the journey in which the accident occurred, in natural course of events, the presence of the owner with the driver need not be disbelieved. The tribunal has accepted the word of the driver and owner in this regard and, in the given facts and circumstances, it may not be fair for this court to upturn the said finding on fact only because a different view is also possible.

9. Thus, the appeal is dismissed. The balance of the amount of compensation deposited by the insurer in terms of order dated 08.01.2013 shall also now be released to the claimant.

10. Statutory amount, if deposited, shall be refunded.

R.K. GAUBA
(JUDGE)

MAY 06, 2016
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