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

Date of Decision: 17th February, 2016

\+ **MAC.APP. 21/2015**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through Mr. Dushyant K. Mahant and Mr. Ankur Mittal, Advs.

versus

HASEENA BEGUM & ORS ..... Respondent

Through Mr. Anshuman Bal, Adv. for R-1 & 2 Mr. Mukesh Kumar Bansal, Adv. for R-3 & 4

MAC.APP. 436/2015

HASEENA BEGUM & ANR ..... Appellant

Through Mr. Anshuman Bal, Adv.

versus

NEW INDIA ASSURANCE CO LTD & ORS ..... Respondent

Through Mr. Dushyant K. Mahant and Mr. Ankur Mittal, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals arise out of the judgment dated 27.10.2014 of the Motor Accident Claims Tribunal (the Tribunal) whereby the petition of Haseena Begum and Nadeem, mother and younger brother of Sajid,

presented under Sections 166 and 144 of Motor Vehicles Act, 1988 (MV Act), registered as MAC.APP.No.568/2010, was decided and compensation in the sum of Rs.7,76,520/- with interest at 9% per annum in the wake of filing of the petition (15.09.2009) till realization was awarded.

2. The insurance company came up with appeal (i.e. MAC.APP.No.436/2015) mainly to challenge the finding recorded by the Tribunal denying recovery rights against Som Nath Nagpal, the owner of offending vehicle (truck bearing No.HR 38C 5667), even though it having been found that Harjinder Singh (the driver of the offending vehicle) was not holding a valid, effective and genuine driving license. During the pendency of the said appeal Haseena Begum and Nadeem (claimants) filed cross-objections which have been registered as independent appeal (No.436/2015) to question the computation of compensation on the ground that deduction on account of personal and living expenses to the extent of 1/3rd was improper and, thus, loss of dependency has been undervalued.

3. The contention of the claimants in their appeal cannot be accepted for the simple reason the deceased was an unmarried person. Though the claimants include the younger brother (then a minor), the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121 applies and the Tribunal has correctly proceeded on the assumption that the deceased would be spending 50% of his income on personal and living expenses.

4. The Tribunal denied the recovery rights to the insurance company on the basis of following conclusions :

"The insurance company has proved that driving licence of driver/respondent no. 1 was fake. The insurance company is to further prove that there was wilful breach on the part of owner to succeed in avoiding liability. It is clear from the testimony of R2W1 Sh. Som Nath that he had seen the driving license of the respondent no. 1 at the time of appointment and had also taken the driving test of the respondent no. 1. Nothing contrary could be elicited during lengthy cross-examination of R2W1, therefore it is clear that the respondent no. 2 had taken driving test of the respondent no. 1 and had also seen the license of respondent no. 1. It is not expected from the owner to get the license verified from the concerned authority which had renewed the license or from parent authority which had issued the license. The established position of law is that if the owner has taken reasonable care to check the driving license at the time of appointment of the driver and also took test of the skills of the driver regarding his competency of driving the vehicle, the respondent no. 2 owner is absolved of liability to pay compensation."

5. The contention of the counsel for the insurance company is that since the owner (R2W1) had admitted that he himself was not capable of driving, he had engaged another driver Kailash to take the test of the driver of the offending vehicle, it cannot be said that he had exercised due diligence. This Court does not find any substance in the contention urged. If the owner does not know how to drive a motor vehicle, there can be no inhibition in he taking assistance of another person well acquainted with driving vehicles to test the capability of the person before he takes him on board as the driver.

6. Having referred to the law laid down in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *United India Insurance Company Ltd. V. Lehru & Ors.* (2003 3 SCC 338 which has been referred to by the Tribunal in the impugned judgment, the view taken cannot be faulted.

7. Both appeals are dismissed.

8. Statutory deposit, if made, shall be refunded.

9. Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 17, 2016
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