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

Date of Decision: 5th April, 2016

+ **MAC.APP. 120/2014**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Ravinder Singh, Adv.

versus

OMVIR & ORS

... Respondents

Through: Mr. Rajeev Nanda, counsel for R-1 to 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 25.11.2013, the motor accident claims tribunal (the tribunal) decided the accident claim case brought by the first to fifth respondents (the claimants), registered as MACT petition No. 301/09/2004 and awarded compensation in the sum of Rs. 3,77,039/- with interest directing the appellant insurance company (insurer) to pay since it is admittedly the insurer in respect of bus bearing registration No. DL 1PA 1974 (the offending vehicle), on account of whose involvement the motor vehicular accident was found to have occurred on 13.2.2002 resulting in death of Giriraj Singh, giving rise to cause of action for a claim under Section 166 of the Motor Vehicles Act, 1988 (MV Act). As per the facts proved, the offending vehicle was owned by the second respondent (since

deceased and now represented by his legal heirs), it statedly having been driven by the second respondent herein Chand Ram.

2. During inquiry before the tribunal, the claim case was contested on the ground that the offending vehicle was not involved in the accident resulting in death of Giriraj Singh, as alleged by the claimants. The claimants examined Rajinder Singh (PW-3), son of Gajraj, driver of three wheeler scooter (TSR), as an eye witness. On the other hand, K.K. Chadha (R3W2), the owner of the offending vehicle, appeared as a witness to depose facts to the contrary, submitting an affidavit sworn on 22.04.2009.

3. Reliance was also placed on the record relating to the investigation of first information report (FIR) No. 55/2002 which had been registered by police station Gokalpuri, North-East, Delhi with regard to the accident in question. The insurer pointed out to the tribunal that the investigation into the FIR had resulted in conclusion reached by the investigating police that the accident had not been caused by the offending vehicle and, thus, a final report under Section 173 of the Code of Criminal Procedure, 1973 (CrPC) was filed in the criminal court, thereby closing the said proceedings.

4. The claimants urged before the tribunal that the involvement of the offending vehicle and the negligence on the part of its driver had been duly proved through the testimony of PW-3. *Per contra*, the insurer argued that since the police which had investigated the case had found that the bus in question was not involved, the evidence of PW-3 could not be relied upon. The tribunal rejected the contentions of the insurer and upheld the case of the claimants and, on the basis primarily of the testimony of PW-3, returned a finding affirming their case and granted compensation.

5. By the appeal at hand, the insurer presses only one issue, viz. that the finding of involvement of the bus is incorrect. It is argued that ordinarily the tribunals rely on the evidence gathered by the police in corresponding criminal cases (FIRs) registered and since in the present case a clear conclusion had been reached that the bus was not involved, it should have been accepted. It is submitted that PW-3, during the course of his testimony, had stated that the bus was partially “under DTC” (Delhi Transport Corporation) and since the buses of DTC generally carry the colour code of green and yellow, the vehicle that had caused the accident could not have been the bus of DTC as the evidence of R3W2 (K.K. Chadha) clearly showed that the offending vehicle was painted in “blue and while colours”. The insurer further argued that PW-3 having admitted that he had seen the accident “after hearing the noise” (presumably the noise of collision), he cannot be stated to be an eye witness of the occurrence. Further, it is pointed out that PW-3, in his cross-examination, stated that he would not remember the season of the year when the accident had taken place which, in the submission of the counsel, shows his veracity in poor light.

6. Having heard arguments and upon going through the record, this Court finds the appeal wholly unmerited.

7. It is not correct to contend that conclusions reached by the investigating police should clinch the issue of involvement (or otherwise) of a vehicle. Undoubtedly, the evidence gathered by the police during investigation comes handy for purposes of inquiries into the accident claim cases brought before the tribunals under the Motor Vehicles Act. But, in such inquiry, the tribunal has to reach its own conclusions on the basis of

evidence presented before it. It also needs to be borne in mind that unlike the criminal jurisprudence wherein the complicity (involvement and fault) of the driver of the alleged motor vehicle must be proved beyond all reasonable doubts, in cases invoking liability in torts - as in motor accident claims - the test is preponderance of probabilities.

8. It does appear that in the present case, upon investigation into the corresponding FIR the police appear to have reached the conclusion that the offending vehicle was not involved. But mere reference to information given out by the Joint Commissioner/GM ISBT of the police department to this effect cannot suffice. It does not explain the reasons why the evidence of PW-3 was found by the investigating officer to be unworthy of reliance. One does not even know as to what was the view taken by the criminal court where such final report of investigation into the FIR would have been presented.

9. The fact remains that the tribunal was duty bound to hold an independent inquiry and reach its own conclusions on the basis of evidence adduced before it. It is unfair to seek rejection of the testimony of PW-3 only on the ground he was unable to remember the season. Noticeably, he specifically mentioned the date of accident (13.2.2002) and it is his version (same as the one presented before the tribunal) which formed the basis of the FIR registered by the police. His presence at or about the scene of accident has been duly brought on record. The witness has affirmed on oath that he was present with his TSR when the accident had occurred. It may be that he may not have watched the entire sequence and it may be that his attention was drawn in the direction of the two vehicles upon hearing the noise of collision. But that definitely cannot mean that he is not in a position to

vouchsafe the particulars of the offending vehicle which was involved in the mishap with the scooter driven by the deceased. He was present at the scene and therefore possessed first-hand information on the subject and given the vantage position also able to gather impressions germane to the issue of fault. Pertinently, the driver of the offending vehicle was not called in the witness box, not even at the instance of the registered owner/insured. The registered owner/insured (R3W1) has not claimed that he was present in the offending vehicle when the accident took place. He, thus, is in no position to refute the case set up through the evidence of PW-3.

10. For the foregoing reasons, the appeal is devoid of substance and is liable to be dismissed.

11. By order dated 05.02.2014, the insurance company had been directed to deposit the entire awarded compensation with accrued interest with the Registrar General of this Court within the period specified and out of such deposit 70% was allowed to be released. The Registrar General shall now release the balance to the claimants in terms of the impugned judgment.

12. The statutory deposit, if made, shall be refunded.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 05, 2016

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