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

Date of Decision: 23rd March, 2016

+ **MAC.APP. 351/2007**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. P. Acharya, Adv.

versus

LAXMI CHAND LALWANI & ORS

.... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In a motor vehicular accident that occurred on 15.3.2002 at about 5.10 p.m. involving bus bearing No. DL IPA 4176 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer), Laxmi Chand Lalwani (first respondent) suffered injuries. He (the claimant) filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (MV Act) on 15.12.2004 before the motor accident claims tribunal (tribunal), which registered it as Suit No. 202/2004. It appears that besides the insurer, the driver (Matru) and the owner (Ram Mohan Verma) of the offending vehicle were impleaded as the respondents. It further appears that during the pendency of the claim petition, at the instance of the claimant, the name of the driver (Matru) was deleted from the array of parties. Thus, the claim petition was pressed only

against the registered owner (the person stated to be vicariously liable) and the insurance (the party statedly liable to indemnify).

2. During inquiry, the claimant led evidence by examining himself (as PW-1), *inter alia*, on the basis of his own affidavit (Ex.PW-1/A) on which he was cross-examined. He also examined certain other witnesses Satender Kumar (PW-2) and ASI Nand Ram (PW-3) to prove the record relating to disability suffered and the evidence gathered during investigation of the corresponding criminal case. The insurer, on the other hand, examined two witnesses mainly to prove the ownership of the vehicle and cover note.

3. The tribunal, by judgment dated 12.04.2007, found that a case for compensation payable by the owner and insurer of the offending vehicle had been made out. It assessed the compensation payable to the claimant at ₹ 1,98,800/- and awarded it with interest.

4. The insurer filed the present appeal raising a number of contentions. At the hearing, the only grounds pressed are that the driver having been deleted, the case could not have been maintained and that there was no proof of negligence on the part of the driver.

5. In the considered view of this Court, the appeal must fail on both counts. The negligence on the part of the driver was duly established by the claimant by his own testimony, based on affidavit (Ex.PW-1/A) in which he had stated that the driver of the bus had moved it in a zig-zag manner so much so its tyre came over a pit and got burst. In the facts and circumstances proved by the claimant, the accident resulting in injuries to

the claimant who was travelling in the bus was on account of bursting of tyre which, in turn, had occurred due to negligent driving of the vehicle. The absence of the driver from the array of parties is inconsequential as the person vicariously liable has been impleaded.

6. The appeal is, thus, liable to be dismissed.

7. By order dated 31.5.2007, the execution of the impugned award was stayed. By order dated 25.03.2010, the said order was modified and the insurer was directed to deposit the entire awarded amount with upto date interest with UCO Bank which was directed to retain it in a fixed deposit initially for a period of six months with right given to the claimant to receive monthly interest through credit into his savings bank account.

8. The amount lying in deposit shall now be released to the claimant in terms of the impugned judgment.

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

10. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 23, 2016
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