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

Date of Decision: 16th March, 2016

+ **MAC.APP. 561/2005**

THE ORIENTAL INSURANCE CO.LTD Appellant
Through: Mr. Manoj Bhandari, Adv.

versus

NIRMAL JAIN & ORS. Respondents
Through: Mr. Anuj Jain, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sunita Jain wife of the first respondent and mother of the second to fourth respondents (collectively, the claimants) travelling with her brother-in-law Navin Jain (the fifth respondent) on the pillion of scooter No.DL 8S 0345 (the scooter) driven by the latter on way from Wazirabad towards Ashok Vihar on 29.11.1993 when truck bearing No.JKA 6429 (the truck) came in a rash/negligent manner and hit against it causing her to fall down resulting in she being crushed to death on the spot. A claim case seeking compensation was filed by the claimants under sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 27.05.1994, which was registered as suit No.515/2003. In the claim case, thus presented, the claimants impleaded Navin Jain, the scooter driver/owner and the appellant insurance company (insurer) which had issued an insurance policy against third party

risk for the period in question in its respect as first and second respondents. The cause title would show that the claimants also desired to implead the driver, owner and insurance company as third to fifth respondents. Admittedly the full particulars of the said proposed respondents were not gathered nor were they ever impleaded or called before the tribunal. The claim case was pressed only against the owner/driver of the scooter and its insurer.

2. During the inquiry, the claimants led evidence by examining five witnesses. They would include S M Chawla (PW1), Record Clerk, Aruna Asaf Ali Hospital to prove the post mortem examination report; Inspector Veer Singh (PW2), SHO, Timarpur to prove the copy of the first information report (FIR No.382/93), which have been recorded on the statement of first respondent Navin Jain (the scooterist); Head Constable Mahavir Singh (PW3), who produced the copy of the case diary pertaining to the investigation of the said FIR (Ex.PW3/A collectively); Nirmal Jain (PW4) widower of the deceased (the first claimant); and Manmohan Shingari (PW5) three wheeler scooter (TSR) driver, who deposed claiming to be an eye witness. It was submitted before the tribunal that due to militancy in the State of Jammu & Kashmir, the police had not been able to carry out a detailed investigation particularly to dig out particulars of the owner or the driver of the truck involved.

3. On appraisal of the evidence, thus adduced, the tribunal concluded that the accident had indeed occurred on account of involvement of scooter No.DL 8S 0345. But, crucially, it also held that the claimants had not been able to show any rash or negligent driving on the part of the scooterist.

4. Having reached the finding to above effect, the tribunal proceeded to make an assessment of the compensation payable, *inter alia*, observing that the mere fact that the scooter was on the road coupled with the fact that death had occurred on account of injuries suffered in a roadside arising out of its use, the owner and insurer of the scooter were liable to pay compensation, referring in this context to the view taken in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai* 1987 ACJ 561 (SC) and *Kaushnuma Begum v. New India Assurance Co. Ltd.* 2001 ACJ 428. The tribunal held that compensation in the sum of ₹9,83,000/- was liable to be paid and thus directed the insurance company of the scooter (the appellant) to pay the said amount with interest as levied, by judgment dated 02.04.2005.

5. By appeal at hand, the insurance company points out that liability to pay the compensation has been wrongly fastened under Section 166 of the MV Act without proof of fault on the part of the driver of the scooter. This, in the submission of the insurance company, was incorrect in view of the law laid down, *inter alia*, in *Minu B Mehta v. Balkrishna Ramchandra Nayan* (1977) 2 SCC 441; *Oriental Insurance Co. Ltd. v. Meena Variyal* AIR 2007 SC 1609 and *Surender Kumar Arora v. Manoj Bisla* (2012) 4 SCC 552. The insurance company also relied on similar view taken by a learned single judge of this court in the *National Insurance Company Ltd. v. Dinesh Tiwari* (MAC.APP.No.291/2006 decided on 13.02.2015) and a learned single judge of Punjab and Haryana High Court in *National Insurance Co. Ltd. v. Babloo* (FAO No.5142/2013 decided on 16.02.2015).

6. Though, initially, the learned counsel for the claimants made an attempt to argue that the view taken by the Supreme Court in *Kaushnuma Begum* (supra) would prevail for the regime prior to insertion of Section 163A of MV Act by the amending Act 54 of 1994 (brought into force w.e.f. 14.11.1994), in the face of clear law in *Meena Variyal* (supra), he submitted that the claimants do not contest the view that in a petition under Section 166 of MV Act, it is mandatory for the claimant to bring home the proof of fault on the part of the driver of the motor vehicle who is to be held as the principal tort-feasor so as to fix the liability on its owner on the principle of vicarious responsibility and, in turn, the liability to be fastened on its insurer under the indemnity clause of the insurance policy.

7. While conceding ground to above effect, the learned counsel for the claimants submitted, on instructions, that though the appeal of the insurance company may be allowed and the impugned judgment insofar as it fastened liability on the appellant (insurer) and the fifth respondent herein, passed by the tribunal on the main petition under Section 166 of MV Act may be set aside. He submitted that since the situation in Jammu & Kashmir has changed, the claimants are now in position to gather the necessary information to have the driver, owner and insurer of the offending vehicle (truck bearing No.JKA 6429) identified and impleaded as party respondents in which respect opportunity is sought for application under Order 1 Rule 10 of Code of Civil Procedure, 1908 (CPC) to be moved before the tribunal.

8. The learned counsel for the claimants, also submitted that the presence of the scooterist and its insurance company would continue to be necessary, though only as proforma respondents for an effective inquiry into

the claim against the driver, owner and insurer of the aforementioned truck. He further submitted that the claimants understand and agree, and undertake, not to claim any further compensation from the fifth respondent (the owner/driver of the scooter) or from its insurer (the appellant), except what has already been received under the provision of Section 140 of MV Act in the sum of ₹50,000/- on the principle of no fault liability which has already been deposited.

9. The learned counsel for the appellant submitted that he has nothing to say on the request for the remand of the claim case for further inquiry against the driver, owner or the insurer of the truck. He, however, submitted that it be clarified that the claimants will have no further claim against the appellant insurance company. Since the claimants have made their position clear, and fairly conceded that they cannot maintain a claim against the scooter driver/owner or its insurer in absence of proof of fault on its part, the claim case insofar as it sought compensation from them is to be treated as dismissed. Ordered accordingly.

10. The appeal is, thus, allowed.

11. The matter is remitted to the tribunal for further proceedings in the light of the above observations. The parties shall appear before the tribunal on 27.04.2016.

12. The amount of ₹50,000/- deposited by the insurance company in terms of order dated 12.08.2005 passed by this court in the appeal at hand shall be treated as the amount payable with accrued interest under the

principle of no fault liability under section 140 of MV Act and shall be released accordingly to the first claimant (the husband of the deceased).

13. Statutory deposit, if made, shall also be refunded.

14. Dasti under the signature of the Court Master.

R.K. GAUBA
(JUDGE)

MARCH 16, 2016/VLD

