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

Date of Decision: 16th February, 2016

+ **MAC.APP. 206/2006**

UOI Appellant

Through: Mr. R V Sinha, Adv.

versus

CHOTTU & ORS. Respondents

Through: Mr. D K Sharma, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appeal at hand under Section 173 of Motor Vehicles Act, 1988 (MV Act) by Union of India is a classic example as to how public money is wasted on frivolous litigation by the government functionaries. Union of India is a party because Central Vehicle Depot of the Ministry of Defence (CVD) was a party respondent before the Motor Accident Claims Tribunal (tribunal) in the claim petition brought by the first respondent herein under Section 166 of MV Act which was registered as suit No.486/1996, also impleading National insurance Company Ltd. (the second respondent herein) as party respondent in view of insurance cover that had been taken out in respect of the offending vehicle against the third party. The first respondent had suffered injuries in a motor vehicular accident that occurred at about 5.15 PM on 18.02.1996. He was moving on foot and had reached

near Sarai Pipal Thala bus stand when a motor vehicle described as troop container bearing registration No.95D 100515L make Eicher approached the scene and hit him. The local police registered first information report No.91/1996 involving offences under sections 279 and 337 of Indian Penal Code, 1860 (IPC). The first respondent suffered grievous hurt and filed the claim petition seeking compensation in the sum of Rs.6,00,000/-.

2. The Tribunal, by judgment dated 23.08.2005, awarded compensation in the sum of Rs.75,000/- in favour of the claimant. It directed the insurance company (the second respondent) to pay the award of compensation though granting recovery rights to it against the CVD (Union of India) because it was the owner of the vehicle and the driver of the offending vehicle had been found to be not in possession of a valid driving license. Noticeably, CVD in its contest had also taken the position that the offending vehicle had not yet become its property as the manufacturing company (Eicher) was still to deliver it against the contract of supply. This contention became the subject matter of third issue regarding defect of non-joinder. The Tribunal held the said issue against the contention of CVD. Yet, it granted recovery rights to CVD (Union of India) against M/s Eicher Motors Ltd. on account of the contract of supply containing an indemnity clause.

3. The Union of India, in its appeal, contends that the finding against the third issue was incorrect and, thus, no liability could have been fastened upon it. The Tribunal considered the contentions concerning the defect of non-joinder and found it against the plea of CVD in the following manner:

“17. The onus to prove this issue lies upon R1. In support of this, they have examined Brahm Parkash, Ordinance Officer, Central Ordinance Vehicle Depot as RIW1. He has stated in his testimony that vehicle no.95 D100 51 52 was never bought by their department and the said vehicle does not belong to their department. Driver Jaabar Raj was never employed by their office. However, a vehicle no.95D 1005154 Eicher Trooper was delivered to their office by Eicher Motors Ltd. on 22.2.1996 and same was taken on charge vide RR No.R/B/D 25 dt.22.02.1996. He has got marked copy of procurement letter as mark R.

18. It has been argued by Ld. Counsel for R1 that the petition is bad for non-joinder and misjoinder of necessary party as M/s Eicher Motors Ltd. has not been pleaded as a party. On the other hand, Ld. Counsel for respondent no.2 as well as petitioner that since vehicle arise and they can not be said to be a necessary party. If the cross examination of Brahm Parkash RIW1 is perused, he has admitted that the vehicle belonged to them. Even to strengthen their case, R1 has failed to put on record registration certificate. The documents available on record such as Mark D which is Warranty and Registration certificate and mark E which certificate issued by M/s Eicher shows that R1 has the ownership of the vehicle involved in the accident. In the presence of these documents including insurance cover Ex.PW1/2, it comes out that R1/CVD who is the owner of the offending vehicle. Thus, M/s Eicher Motors Ltd. can not be said to be a necessary party and the suit is not bad for non-joinder and misjoinder. Therefore, this issue is decided against R1.”

4. On being asked, the learned counsel for the appellant (Union of India) was unable to point out any error on the part of the Tribunal in taking note of the evidence that had come on record. Since the documents clearly showed that the vehicle was owned by CVD, the contentions of the appellant are devoid of substance. Since it had been granted recovery rights

against Eicher Motors Ltd. in terms of indemnity clause statedly contained in the contract of supply, this appeal is ill advised. It being unmerited, the appeal is dismissed.

R.K. GAUBA
(JUDGE)

FEBRUARY 16, 2016
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