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

Date of Decision: 18th April, 2016

+ **MAC.APP. 250/2006**

ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr. Ram N. Sharma, Adv.

versus

RATNAJHA & ORS. Respondents

Through: Mr. D. K. Singh & Ms. Shanti Rayan,
Adv. for R-7 & 8.

AND

+ **MAC.APP. 311/2016**

RATNAJHA & ORS. Appellants

Through: None.

versus

GANGA KUMAR & ORS. Respondents

Through: Mr. Ram N. Sharma, Adv. for
respondent/insurance company.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Harish Chandra Jha, a law graduate, enrolled as an advocate but employed in private service, died as a result of injuries suffered in a motor

vehicular accident that occurred on 26.07.1999 involving a motor vehicle described as Nissan four wheeler bearing registration no.UP-14K-5093 (the offending vehicle). His wife and other dependant family members (appellants in MAC appeal no.311/2016) preferred an accident claim case (suit no.294/2003) on 22.11.1999 under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal), impleading Ganga Kumar and Surjeet Singh, concededly the driver and registered owner respectively of the offending vehicle alongwith Oriental Insurance Co. Ltd. (appellant in MAC appeal no.250/2006) as respondents. The tribunal, after notice, held inquiry and by judgment dated 19.12.2005 upheld the case of the claimants that the accident had occurred due to rash driving of the offending vehicle. It awarded compensation in the sum of ₹9,68,000/- with interest at the rate of nine percent (9%) per annum in favour of the claimants calculating the loss of dependency at ₹9,52,000/- primarily on the basis of conclusion that the income of the deceased was in the sum of ₹7,000/- per month, adding the non-pecuniary damages.

2. The insurance company had contended before the tribunal that the offending vehicle was a medium goods vehicle within the meaning of the definition in Section 2(23) of MV Act and led evidence in its support. During inquiry, it was proved that the driver of the offending vehicle was holding, at the relevant point of time, a driving license issued by the licensing authority, Ghaziabad, Uttar Pradesh, permitting him to drive light motor vehicle (LMV) or a motorcycle only, license having been endorsed for purpose of heavy goods vehicle (HGV) *w.e.f.* 17.07.2002 *i.e.* after the accident which is subject matter of these proceedings. On the basis of these

submissions and evidence, it was argued by the insurer before the tribunal that there has been breach of terms and conditions of the insurance policy as the driver of the offending vehicle was not permitted to drive medium goods vehicle. This contention was rejected by the tribunal.

3. By its appeal (MAC appeal no.250/2006), the insurer presses only for recovery rights contending that since the evidence had clearly brought home its case that the offending vehicle was registered with the transport authority in Ghaziabad, Uttar Pradesh as a medium goods vehicle, the driving license relied upon by the driver and owner of the offending vehicle being only for purpose of light transport vehicle, the case of breach of terms and conditions of the insurance policy had been brought home and there is no reason why the recovery rights should not have been granted.

4. During the pendency of the appeal of the insurer, the claimants submitted cross-objections (CM No.12500/2006) which were treated as an independent appeal. By the said appeal (cross-objections), the claimants submitted grievances mainly to the effect that the income had not been properly assessed and that the interest for the period the claim case had remained in dismissal in default should not have been denied. It must, however, be added that having filed the cross-objections raising grievances about the award of compensation, the claimants have not shown any further interest as they stopped appearing after 28.08.2012.

5. Having heard arguments and having gone through the tribunal's record, the grievances of the claimants with regard to the computation or denial of interest for the period the claim case remained dismissed in default are found to be unmerited.

6. The deceased, though a law graduate and having been enrolled as an advocate was not in regular practice. Instead, the evidence adduced by the claimants themselves showed that he had joined private employment as legal officer with entity M/s Envirotech Utility which had issued appointment letter (Ex.PW1/A), the salary slips (Mark-A, B & C) relied upon by the claimants themselves showing the gross emoluments to be ₹6800/- per month. The tribunal rounded off the said amount and assumed the income as ₹7000/- per month and worked out the loss of dependency accordingly. As regards the denial of interest for the period, the claimant case remained in dismissed in default, the tribunal has given proper justification for taking the said view. Since the claimants were not diligent in proper prosecution of the claim case, there is no good reason why the view taken by the tribunal in this regard should be interfered with.

7. Concededly, the driving license held by the driver of the offending vehicle was valid only for purpose of motorcycle or light transport vehicle. The evidence of N. C. Sharma (R3W2), Assistant Regional Inspector of the office of the Road Transport Officer, Ghaziabad, Uttar Pradesh in this regard has gone unchallenged. The offending vehicle was initially registered with the transport authority, Delhi against registration no.DBL-1309. The certificate of registration (Ex.R1W1/A), affirmed on oath by Ram Kumar (R1W1), an official of the said transport authority shows that its unladen weight (ULW) was 3710 kg and laden weight (RLW) was 6000 kg. The said vehicle was later transferred to Ghaziabad, Uttar Pradesh where it came to be registered against no.UP-14K-5093 *w.e.f.* 26.07.1999. A. P. Srivastava (R3W3), an official from the office of RTO, Ghaziabad, Uttar

Pradesh proved the requisite report of the said transport authority showing that the ULW of said vehicle is 3710 kg and RLW is 7710 kg. This fact was admitted by Surjeet Singh (R2W1), registered owner of the offending vehicle, the respondent in the claim case, in the course of his testimony during inquiry.

8. In above view, the conclusion reached by the tribunal is found to be erroneous. Section 2(16) of the MV Act defines a heavy goods vehicle to mean any goods carriage the gross vehicle weight of which exceeds 1200 kg. Section 2(21), in contrast defines LMV to mean a transport vehicle the gross vehicle weight of which does not exceed 7500 kg. Section 2 (23), on the other hand, defines medium goods vehicle which means a goods carriage other than a light motor vehicle or heavy goods vehicle. Since the offending vehicle has a gross weight of 7710 kg, it would fall in the category of medium goods vehicle. In this view of the matter, the driver of offending vehicle was not holding a valid driving licence for its purpose. Thus, the insurer had proved before the tribunal its case of breach of terms and conditions of the insurance policy. Hence, it should have been granted recovery rights.

9. For the foregoing reasons, the appeal of the claimants (MAC appeal no.311/2016) seeking enhancement of compensation or modification of the terms of the award is dismissed.

10. The appeal of the insurer (MAC appeal no.250/2006) is allowed. The impugned judgment is modified. It is held that there was a breach of terms and conditions of the insurance policy as the driver of the offending vehicle was not holding a valid or effective driving license. Therefore, the

insurance company is granted right to recover the compensation paid to the claimants in this case from the owner of the offending vehicle.

11. The insurance company had deposited the entire awarded amount with interest with the tribunal in terms of the earlier directions. Fifty percent of the said deposited amount was allowed to be released by order dated 29.03.2006. The balance shall also be reduced in terms of impugned judgment.

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

13. The appeal stands disposed of in above terms.

APRIL 18, 2016
ssc

R.K. GAUBA
(JUDGE)

