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

Date of Decision: 18th January, 2016

+ MAC Appeal No. 393/2006

SANJU DEVI & ORS. Appellants
Through: Mr. J.S. Kanwar, Adv.
versus

RAM DHAN SINGH & ORS. Respondents
Through: Mr. Sameer Nandwani, Adv. for
R-2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Jagdish son of Shyam Lal aged about 32 years was travelling in an open body truck make Tata 407 bearing registration No. DL-1LD-4935 (hereinafter referred to as “the offending vehicle”) on 7.7.2004 from Delhi to Haridwar. The truck at the time of accident was carrying, besides Jagdish, 14-15 other passengers. The truck met with an accident at 5.30 a.m. on the said date near Sultanpur on Haridwar road within the jurisdiction of police station Laksar, District Haridwar, State of Uttranchal. As a result of the injuries suffered by Jagdish he died giving rise to cause of action for compensation to be claimed under Sections 166 read with Section 140 of the Motor Vehicles Act, 1988 (“MV Act”) by his legal heirs namely Sanju Devi (widow), Ms. Shivani (daughter), Ms. Simran (daughter) and Smt. Laxmi Devi (mother). The said legal heirs (now the appellants) claimed compensation against Ram Dhan Singh @ Ram Dhan Negi son of Shri Shyam Singh, driver and owner of

the offending vehicle and M/s United India Insurance Company Ltd. (insurer). The claim petition was contested by both the said parties and resulted in judgment dated 24.11.2005 whereby compensation in the sum of ₹ 6,62,712/- was awarded in favour of the appellants. The Motor Accident Claims Tribunal (“the tribunal”), however, upheld the contention of the insurance company that the deceased was a gratuitous passenger travelling in the goods vehicle and, thus, the insurance company could not be held liable. The owner-cum-driver of the offending vehicle thus were held liable to pay the compensation.

2. The appeal at hand was presented under Section 173 of MV Act on 26.04.2006, *inter alia*, seeking enhancement of the compensation awarded and also to question the correctness of the view taken by the tribunal absolving the insurance company of its liability. The proceedings recorded in this Court would show that the appeal has not been diligently prosecuted. Suitable steps were not taken in time for the respondents to be served. The appeal came to be dismissed in default on one stage. Even after restoration, effective steps were not taken for the driver-cum-owner (the first respondent herein) to be served. The matter came up for consideration for hearing against this backdrop when it has been submitted by the counsel representing the appellants that no relief in the nature of enhancement of the awarded compensation is pressed. The appeal, thus, has been submitted for consideration restricted to the question of liability of the insurance company. In this view the service of the owner and driver (the first respondent) has been dispensed with.

3. On the question of the objection of the insurance company as to its liability, the tribunal observed as under:-

“17. Deceased Jagdish was admittedly traveling in the goods vehicle and the offending vehicle was insured for third party risks, as per Policy of Insurance Ex C-1 in the nature of goods carrying commercial vehicle (Open) Package Policy. Shri Nandwani, Ld counsel for the Insurance Company pointed out that the vehicle was insured for third party risks and separate premium was paid for third party property damage, personal Insurance to owner and driver apart from workmen compensation to two employers. Mr. Nandwani, Ld counsel for the Insurance Company argued that the Insurance Company is not liable to indemnify the insurer or to compensate the claimants since the deceased was traveling as a gratuitous passenger and contrary to the terms and conditions of the permit as well as Insurance Policy. He referred to the decision in New India Insurance Company Ltd V. Asha Rani (2003) II SC 223.

18. At the cost of repetition, the offending vehicle was Insured for third party risks as a Goods carrying commercial vehicle. In other words, as per Section 2(14) of the Act, it was a vehicle which was constructed or adopted for use solely for carriage or transportation of goods. It is in evidence that the vehicle was hired from Delhi to Haridwar and back by the members of a Temple Committee for traveling of about 15-16 devotees on the occasion of bringing Kawaras. This is the religious ritual or practice followed in northern India where the devotees go to Haridwar to fetch Holi water from the river Ganges and bring it back so to bathe and make offer to Lord Shiva. Ex facie, unfortunate as it may appear that goods vehicle was not meant for transporting or carnage of passengers.

19. In other words, the coverage of third party risks does not envisage covering risks to the passengers to the Goods vehicle and the decision of Rani (Supra) is categorical that the insurer cannot be held liable to pay compensation to the family of the victim who was traveling in a Goods vehicle. The deceased unfortunately was a gratuitous passenger for whom no Insurance Policy was envisaged since no Insurance Premium was paid to cover risk. In the

said view of the matter I am afraid that Insurance Company/Respondent No. 2 is exonerated of its liability to indemnify the insured. Nonetheless the Tortfeasor respondent no.1 remains liable to compensate the family of the victim in this case and therefore, liability to pay compensation is fastened on respondent no.1, which be paid to the claimant within 30 days from today.”

4. The learned counsel for the appellant has relied upon judgments in the cases of *Branch Manager, National Insurance Co. Ltd. vs. Khushboo & Ors.* 2009 ACJ 430 and *National Insurance Co. Ltd. vs. Sarojamma & Ors.* 2009 ACJ 119. His submissions essentially are that *Kanwars* carried in the offending vehicle have to be treated as goods, and, thus, owner of the goods could legitimately travel with it in the goods carriage. On careful consideration, I do not find any substance in the submissions made. There is clear finding recorded by the tribunal that the offending vehicle had been hired for travel of 15-16 devotees. Thus, the vehicle had not been hired for carriage of goods. In these circumstances, the cases relied upon will have no application.

5. The view taken by the tribunal cannot be faulted. The appeal is devoid of substance and is dismissed.

**R.K. GAUBA
(JUDGE)**

JANUARY 18, 2016/nk