

\$~R-10 & 11

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

Date of Decision: 9th February, 2016

+ **MAC.APP. 876/2006**

ERA CONSTRUCTIONS INDIA LTD. Appellant

Through: None

versus

UNITED INDIA INSURANCE COL. LTD. Respondent

Through: None

+ **MAC.APP. 921/2006**

DR. SURESH SHARMA AND ORS. Appellants

Through: None

versus

SAYEED JABEB MIAN AND ORS. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 07.09.2002, Krishna Devi aged 60 years was crossing the road in front of gate No.2 of Lok Nayak Hospital, New Delhi at about 12.50 PM when she was hit by a truck bearing registration No.HR-38F-4002 (the offending vehicle) and suffered injuries consequent to which she died on the spot. The truck was driven by Sayeed Jabeb Mian (the driver), the offending vehicle being registered in the name of M/s Era Construction Limited (the owner).

2. Dr. Suresh Sharma, Dr. Dinesh Shrama and Dr. Rakesh Sharma (collectively, the claimants) brought a claim petition under Sections 166

and 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation, claiming to be the legal heirs left behind by the deceased who, as per their claim, was working for gain earning about Rs.3,000/- per month. The petition was converted into one under section 163A of MV Act in terms of prayer made through application which was allowed by the Motor Accident Claims Tribunal (the Tribunal) by order dated 25.03.2004.

3. The driver and owner of the offending vehicle were impleaded in the claim petition as first and second respondents respectively. The claimants also impleaded, as third respondent, M/s United India Insurance Co. Ltd. (the insurance company) referring to policy No.040703/44/01/30037 issued by Connaught Place Branch of the said insurance company.

4. The first and second respondents filed a written statement, *inter alia*, stating that the petition had been filed without any cause of action, though admitting that accident had occurred resulting in death pleading that the deceased was negligent and on that basis contending that no compensation could be claimed. The said respondents before the Tribunal also pleaded that the offending vehicle was fully insured with the insurance company and that the duty to pay compensation was its sole responsibility.

5. The insurance company, on the other hand, sought to clarify that the insurance policy referred to had been issued as contractors plant and machinery insurance policy for the period 05.02.2002 to 04.02.2003 in the name of the owner of the vehicle and that it was not a motor vehicle policy, not the least against third party risk.

6. The Tribunal held inquiry into the claim petition and decided the same by judgment dated 02.08.2006 holding the claimants to be entitled to compensation in the sum of Rs.75,000/- to be apportioned amongst them in equal shares. It upheld the contention of the insurance company and held the insurance policy referred to above was not for insurance against third party risk on account of use of the offending vehicle on public road. Noticeably, the driver and the owner of the offending vehicle did not lead any evidence before the Tribunal.

7. The owner M/s Era Construction Ltd. feeling aggrieved came up with the appeal under Section 173 MV Act (MAC.APP.No.876/2006), *inter alia*, contending that the insurance policy referred to above also covered the third party risk against use of the offending vehicle on public road. It submitted that the truck was so insured with respect to movement of the said vehicle, even while it was at rest or in operation at the site in Lok Nayak Hospital and since the accident had occurred at the gate of the said hospital, the risk was covered under the said policy. It was contended that the Tribunal had granted compensation without properly appreciating the contentions of the owner.

8. The claimants, on the other hand, also came with an appeal under section 173 of MV Act (MAC.APP.921-23/2006), *inter alia*, contending that compensation has not been properly computed as there is no compensation awarded on account of loss of dependency. Reference in this context is made to the second schedule of the MV Act inserted with reference to Section 163A wherein notional income of Rs.15,000/- per annum was to be adopted in case of non-earning persons. The claimants question the correctness of the observations of the Tribunal in the

impugned judgment that since the deceased was 60 year old, and all the claimants are her sons who were financially independent, there was no loss of dependency.

9. These appeals were filed in the year 2006 and were admitted and directed to be shown in the category of regular matters. They came up for hearing on 11.02.2013 but at the request of the counsel for the claimants the hearing was deferred till 15.03.2013. They came up again for hearing on 15.05.2013 but no one except the counsel for the insurance company appeared and, thus, the hearing was again deferred. On 25.09.2013, once again no one appeared on behalf of the owner and the matters were adjourned yet again to the week commencing 16.12.2013. On 03.01.2014, the position with regard to the owner of the offending vehicle continued to be the same and so the matters had to be adjourned once again. Finally, on 04.02.2014 both sides were duly represented, but on the request of the counsel for each appellant, the hearing was once again adjourned.

10. No one has been appearing for the appellant in either of these matters ever since, even though these appeals were called out on 18.01.2016 and 22.01.2016. A caution was given in the order passed on 22.01.2016 that these appeals are 10 year old and cannot be allowed to linger further. It was directed that if none appears on the next date when these appeals are taken up they shall be decided on the basis of material on record. Since the situation even today continues to be the same as above, there is no reason why the matters should be deferred yet again.

11. This Court, thus, has gone through the files of both these appeals and has considered the contentions on the basis of available record and proceeds to decide the two appeals by this common judgment.

12. There is indeed substance in the contention of the claimants that denial of compensation on account of loss of dependency was improper. It appears to have escaped the notice of the Tribunal that the claim petition had been converted into one under section 163A of MV Act. Though the claimants appearing as PW1 and PW2 in support of their claim stated that the deceased was doing a part-time job attached with a doctor earning Rs.3,000/- per month, in absence of corroborative proof, the said oral word was not believed, and rightly so.

13. In above circumstances, the contention of the claimants in their appeal that the Tribunal should have computed the loss of dependency on the basis of notional income under second schedule to the MV Act is correct. It is, thus, assumed that the deceased was earning Rs.15,000/- per annum. Since her sons (the claimants) were not financially dependent upon her, deduction to the extent of 50% will have to be made to calculate the loss of dependency. By this reckoning, the annual loss of dependency comes to Rs.7,500/-. Having regard to the fact that the deceased was 60 years old at the time of death, the total dependency loss needs to be calculated with the help of multiplier of 9. In this view, the loss of dependency to the tune of Rs.67,500/- requires to be compensated. The award of Rs.75,000/- based only on non-pecuniary damages, thus, needs to be enhanced to $(75,000 + 67,500)$ Rs.1,42,500/-.

14. The award is modified and enhanced to Rs.1,42,500/- in favour of the claimants. It shall carry interest levied by the Tribunal, the

compensation to be apportioned in equal shares amongst the three claimants.

15. The claimants by way of their appeal, have also joined their voice with the owner in its appeal with regard to the liability of the insurance company. On careful appraisal of the evidence, however, this Court finds it difficult to uphold the said contention so as to burden the insurance company with any liability to indemnify.

16. The insurance company had led evidence by examining Neeraj Jain (R3W1) and Anil Kumar Sagar (R3W2) and had proved the insurance policy (Ex.R3W1/1). The document clearly shows that the insurance cover was in respect of machinery and plant. The insurance policy was not taken out against third party risk in terms of the MV Act and, therefore, cannot be allowed to be pressed in aid for direction to the insurance company to indemnify.

17. The appeal of the owner (MAC.APP.No.876/2006) is dismissed.

18. The appeal of the claimants (MAC.APP.No.921/2006) is allowed in above terms. It shall be the responsibility of the driver and owner (the first and second respondents before the Tribunal) to pay the compensation enhanced as above, by deposit with the Tribunal within 30 days of today. In case of default, the claimants are at liberty to take out appropriate proceedings before the Tribunal.

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

FEBRUARY 09, 2016
VLD