$~R-13

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

Date of Decision: 18th February, 2016

\+ **MAC.APP. 963/2006**

THE NEW INDIA ASURANCE CO. LTD. ..... Appellant

Through: Mr. R.B. Shami, Adv.

versus

MEERA DEVI & ORS. ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 15.01.2004, Paras Sharma was travelling as a labourer in truck bearing registration no.HR-26GA-1381 (described in the impugned judgments as the deceased's vehicle) which was driven by Aarif (ninth respondent). The said vehicle was owned by Mahesh Chander Garg (eight respondent) and it was concededly insured against third party risk with the appellant/insurance company. The driver, owner and insurer of the said truck were impleaded as third to fifth respondents in the claim petition before the motor accident claims tribunal (the tribunal), registered as suit no.43/2005. The truck was involved in collision against another truck bearing registration no.DL-1GH-2576 (described in the impugned judgment as the offending vehicle). The offending vehicle was driven by Nand Lal (sixth respondent herein) and was owned by Sriniwas (seventh respondent

herein). It appears that the offending vehicle was not insured against third party risk for the relevant period.

2. Paras Sharma died as a result of injuries suffered. The dependant members of his family (first to fifth respondents herein) brought a claim under Section 166 & 140 of Motor Vehicles Act, 1988 (the MV Act) on 19.03.2004, *inter-alia*, contending that the accident had occurred due to negligent driving on the part of the drivers of both the vehicles. After notice, the tribunal held inquiry and on its conclusion passed judgment dated 29.08.2006 which is impugned in the appeal at hand. The tribunal concluded that the accident had occurred on account of negligent driving of the offending vehicle by the sixth respondent herein. Yet, while assessing the compensation awardable at ₹6,97,000/-, it directed the insurer company (appellant) of what is described as deceased's vehicle to pay the sum to the claimants in terms of Section 163-A of the MV Act, having been persuaded to take such recourse following the view taken by a learned single judge of this court in case reported as *Bala and Ors. Vs. Moti Chand Gupta & Ors.*, 2003 VIII AD (Delhi) 256.

3. The appeal was filed by the insurance company to contend that the liability could not have been fastened on it since the driver of the truck in which regard it had issued the insurance policy had not been found guilty. It was submitted that even if on account of use it had to be burdened to bear responsibility towards compensation, the same should have been restricted to what could be awarded under Section 163-A of MV Act or under the Workmen's Compensation Act, 1923, now known as Employee's Compensation Act, 1923.

4. It is noted that the claimants have been resisting the appeal at hand, their contention, as noted in the order dated 09.07.2009 being that the tribunal had fallen into order by absolving the driver of the truck in which respect the appellant/insurance company had issued the insurance policy against the third party risk of the responsibility in the accident.

5. Given the issue raised by the insurance company in appeal, the question as to who was at fault or negligent in causing collision is at large. Having regard to this fact, this court called upon the learned for the appellant to argue on the issue of negligence.

6. Having heard the learned counsel for the appellant and gone through the record of the tribunal, it is found that the tribunal had fallen into an error in rejecting the evidence of the claimants that the accident had occurred due to negligence on the part of the drivers of both the vehicles. The evidence led was summarized by the tribunal in the impugned judgment in the following words:-

> "*PW1 has deposed that he was the brother of the deceased aged 35 years at the time of accident. He has also deposed that he was an eye witness. He has also deposed that on 15.01.2004 at about 07:30 AM, the respondent No.4 proceeded the vehicle No.HR-26GA-1381 from Vijay Vihar to JC Bhatta Sohati after boarding 8-10 labourers and when they reached near Mohani Hospital, Jaunti, another truck No.DL-1GB-2576, came from the front side and suddenly both vehicles hit each other and thereby deceased sustained multiple injuries and was taken to the nearest hospital. He has also deposed that the accident took place due to contributory negligence of respondent Nos.1 & 2. Said deposition of PW1, though cross-examined on behalf of R-1, I observe, has gone unshaken. PW2 has also deposed to the similar effect as deposed to by PW1 and*

though cross-examined on behalf of Respondent, his deposition has also gone unshaken. Though respondent No.1, who appeared as R1W1, has deposed that he did not drive the offending vehicle rashly and negligently and that the deceased was victim of the rash and negligent driving of the truck in which he was traveling, his such sole deposition, I am not inclined to believe in view of the challan Ex.PX that has come to be filed U/s 279/337/304-A IPC and wherein the accused is none else but him only, as also the fact that there is nothing on record to show that the petitioners or any of the police official have had any enmity against him to falsely implicate him in the case. Site plan forming part of challan Ex.PX and the location of the truck in which the deceased was travelling and the place of occurrence of the accident by itself also indicates that the offending vehicle had come on the wrong side of the road and hit into the deceased truck. Though, both PW1 & PW2 have deposed that there was contributory negligence of the drivers of both the truck, keeping in view the site plan forming part of challan Ex.PX and the consequent filing of the challan U/s 279/337/304-A IPC wherein the accused is none else but the respondent No.1, I have no hesitation in holding that it was the offending vehicle that was being driven rashly and negligently and was responsible for the occurrence of the accident and the consequent fatal injuries sustained by the deceased. Issue in hand is answered accordingly."

7. It is clear from bare perusal of the aforesaid observations of the tribunal that it accepted the impression gathered by the investigating police officer as the gospel truth. The charge-sheet to which reference has been made by the tribunal for absolving the driver of the truck in which the deceased was travelling of any responsibility is nothing but opinion of the investigating police officer that could not have clinched the issue. The brother of the deceased (PW1) was an eye witness and his testimony that the two vehicles had collided from front side indicates that it was a head-on collision, in which view the plea of contributory negligence required to be

acutely examined. Given the testimony of PW1, the case of the claimants that both drivers had been negligent could not have been rejected. The site plan referred to by the tribunal in reaching conclusions to the contrary rather shows that the truck in which the deceased was travelling had been hit by the other truck coming from the opposite direction in the middle of the road.

8. In above facts and circumstances, the finding returned by the tribunal holding the driver of the truck in which the deceased was travelling not to be guilty of negligence is set aside. It is held that drivers of both vehicles i.e. sixth and ninth respondent herein were equally guilty of negligence, each having contributed to the cause leading to the fatal mishap.

9. In view of above, the liability to pay the compensation is apportioned in equal ratio on the owner and driver of the offending vehicle (sixth and seventh respondent herein) jointly and severally and the owner and driver of the deceased's vehicle (eighth and ninth respondent) jointly and severally. In the result, the appellant insurance company is held liable to indemnify the eighth respondent to the extent of his liability which is fifty percent of the award.

10. By order dated 01.12.2006, the appellant/insurance company had been directed to deposit the entire awarded amount with the tribunal within the period specified. By order dated 21.08.2008, fifty percent (50%) of the said deposited amount with interest was allowed to be released to the claimants in terms of the impugned judgment. By subsequent order dated 24.11.2009 , another sum of ₹50,000/- was allowed to be released to the first claimant by transferring the said amount to her savings bank account at her native place,

remainder directed to be kept in fixed deposit in her name for a period of 5 years with liberty given to draw monthly interest therefrom.

11. The tribunal shall calculate the amounts payable by the appellant insurance company in terms of the award modified as above apportioning the liability only to the extent of fifty percent in its respect and deal with the deposited amount accordingly. If any further amount is to be released from the amount deposited by the insurance company to the claimants, necessary orders shall be passed by the tribunal to that effect. Conversely, if the amount lying in deposit is in excess of the liability of the appellant/insurance company, the same shall be refunded to it with accrued interest. If amount already released to the claimants is in excess of the liability of the appellant/insurance company, it shall be granted liberty to take out appropriate proceedings to recover it from driver and owner of the other vehicle (sixth and seventh respondent herein) in accordance with law.

12. The sixth and seventh respondents are directed to pay the amount payable by them to the claimants by depositing the same with the tribunal in terms of the award modified as above within 30 days of today. In case of any default on their part, the claimants are at liberty to get it recovered by way of appropriate proceedings in accordance with law.

13. The statutory amount deposited by the appellant/insurance shall be refunded.

14. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 18, 2016/ssc