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

Date of Decision: 4th March, 2016

\+ **MAC.APP. 399/2007**

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

CHANDAN SINGH & ANR. ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By the appeal at hand, presented under Section 173 of Motor Vehicles Act, 1988 (MV Act), the insurance company has challenged the judgment passed by the motor accident claims tribunal (tribunal) on 16.4.2007 awarding compensation in the sum of ₹ 5,00,000/- with interest @ 7% per annum from the date of filing of the claim petition (17.4.1998) by the first respondent herein under Sections 166 read with Section 140 of MV Act for the injuries suffered by him in a motor vehicular accident that occurred on 11.30 a.m. on 19.8.1997 involving motor vehicle described as TATA Sumo bearing registration No. DL 1Y 3978 in the area of Agolai Jodhpur (Rajasthan).

2. According to the petition presented by the first respondent (the claimant), he was engaged as a driver on the vehicle in question by his employer M/s United Tour & Travels office at Paharganj, New Delhi at wages of ₹ 4,000/- per month including overtime and other allowances. The claimant was driving the vehicle on way to Jodhpur with some passengers at the aforementioned time, date and place. The vehicle turned turtle as the driver (the claimant) lost control while he was trying to save a cow which had strayed into its path, resulting in injuries being sustained by him. As per the claimant's averments, he had suffered disability of permanent nature assessed to the extent of 70%.

3. In the claim petition, Satish Kumar Sethi (second respondent in appeal) was impleaded, he being the owner of the vehicle, in addition to the appellant insurance company, it being the insurer which had admittedly issued the insurance policy against third party risk for the period in question.

4. While the owner of the vehicle (second respondent) suffered the proceedings before the tribunal *ex-parte*, the insurance company (appellant) contested, while taking other defences, mainly on the ground that a petition under Section 166 of MV Act could not be maintained as the claimant himself was the driver of the vehicle.

5. The tribunal held inquiry by framing issues that included the first one setting the stage for probe as to whether the claimant had suffered injuries on account of rash/negligent driving of the said vehicle by the registered owner. The issue was improper as it was never the case of the claimant that there was negligence on the part of the owner. On the basis of evidence led,

primarily the statement of the claimant himself, the tribunal concluded that he had suffered injuries in the motor vehicular accident conspicuously avoiding making any comment on the subject of "fault".

6. By the impugned judgment, the insurance company was fastened with the liability to pay the awarded compensation, though with liberty to recover from the owner (second respondent), the amount paid in excess of its liability under the Workmen's Compensation Act, 1923 (now Employees' Compensation Act, 1923). The tribunal directed that from out of the awarded compensation an amount of ₹4,00,000/- along with proportionate interest shall be kept in fixed deposit in a nationalized bank for a period of twenty year, renewable after every five year, with right to draw quarterly interest granted to the claimant.

7. By the appeal at hand, the insurance company argued that a claim petition under Section 166 of MV Act could not have been maintained before the tribunal on the basis of the aforementioned averments and evidence led in its support. It also contended that it could not have been held liable to pay even the compensation awardable under Employees' Compensation Act, 1923 referring in this context to the depositions of Pritam Singh (PW-2), examined by the claimant during inquiry, he being the proprietor of M/s United Tour and Travels, wherein he has declined to confirm the claim about any employer/employee relationship between the two of them. It is pointed out that it has not been the case of the claimant, either in the claim petition or even in the appeal, that he had been an employee of Satish Kumar Sethi (the second respondent), the registered owner (insured) of the offending vehicle.

8. By order dated 11,07,2007, while issuing notices on the appeal, the operation of the impugned judgment was stayed by a learned single judge of this Court. In response to the said processes, the claimant appeared through counsel on 03.07.2008, but the second respondent (owner/insured) chose to suffer these proceedings *ex-parte*. The matter came up for hearing, against the above backdrop, on 21.4.2009 when it was submitted on behalf of the appellant (insurer) before the learned single judge then hearing the matter that the insurance company admits its liability under the Workmen's Compensation Act. Taking note of this "admission", the learned single judge directed the insurance company to deposit the entire awarded compensation with interest before the tribunal and allowed release of the portion other than the one put by the tribunal in fixed deposit, though granting right to the claimant to avail of periodical interest against the latter as well. After the said order, the claimant has not appeared on the dates when this appeal has been taken up for hearing. None is present on his behalf even today. Having regard to the old pendency of the appeal, there is no reason to defer the hearing yet again.

9. During the hearing, it was pointed out by the counsel for the appellant (insurer) that the record of the tribunal includes photocopy (pages 185-191) of what appears to be an award passed on 26.2.2002 by the presiding officer of Labour Court VII, Delhi in Industrial Dispute (ID) No. 315/1998 in the matter between the workman described as "*Chander Shekhar, C/o Delhi General Trade Union Congress, B-77, New Govindpura, Delhi-110051"* and the "*Managements of 1) M/s Satish Kumar Sethi, 951, Mantola Gali Chandniwali, Paharganj, New Delhi 2) M/s United Tours & Travels, No.83,*

D.B. Gupta Road, Paharganj, New Delhi-110055". A perusal of the document shows that the claim before the Labour Court had been made on plea of illegal termination of services of said workman. The background facts as set out in the award show that the workman (Chander Shekhar) had, *inter alia,* pleaded that he had suffered injuries in a motor vehicular accident that had occurred on 10.8.1997, while he was driving, on way to Jodhpur, the motor vehicle bearing No. DL 1Y 3978 - the same vehicle as mentioned in the claim petition in respect of which the present appeal arises.

10. The insurance company argues that the tribunal should have first addressed the objection as to the maintainability of the claim petition under Section 166 MV Act before deciding on the quantum of compensation or fastening liability. It further submits that in the face of the award passed by the Labour Court referred to above, the involvement of the vehicle in the accident resulting in injuries statedly suffered by the claimant itself is highly suspect and since the said document was part of the record, the tribunal should have first probed the said angle before accepting the oral word of the claimant (PW-1). It is further contended that if the claimant was able to prove that he had suffered injuries in the accident involving the use of aforementioned motor vehicle, he could have, at best, be considered for compensation under Section 163-A MV Act on "no fault liability" principle but for this the calculation had to be made as per second schedule only.

11. In the given facts and circumstances, when the matter requires a deeper probe, this Court refrains from passing any observations on the contentions raised by the insurance company. The proper course is for the matter to be remitted to the tribunal for further inquiry and fresh

adjudication on all the pleas including the ones raised by the insurance company. Ordered accordingly.

12. The impugned judgment is set aside. The claimant's case is remitted to the tribunal for further inquiry and fresh adjudication. For this, the parties are directed to appear before the tribunal on 7^{th} April, 2016. Needless to add, the tribunal while deciding the matter shall not feel bound by the views taken earlier in the impugned judgment. It shall proceed to consider all questions, including of fact and law with open mind, *de hors* the oral admissions made at the hearing on appeal.

13. In the given facts and circumstances, there is no reason why the balance lying in fixed deposit should continue to be retained. It shall presently be refunded to the insurance company with accrued interest. The amount already released to the claimant shall be subject to further directions of the tribunal in accordance with the findings returned and judgment passed afresh on the claim petition.

14. Statutory deposit, if made, shall be refunded.

15. Appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 04, 2016
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