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

Date of Decision: 19th April, 2016

+ **MAC.APP. 513/2013**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Adv. with Mr.
Shoumik Mazumdar, Adv.

versus

SHRI MOHD SUMAN@ MOHD MIAN & ORS Respondents
Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first and second respondents (hereinafter referred to as the claimants) had instituted an accident claim case (MACT No.297/12) on 05.12.2007 before the motor accident claims tribunal (tribunal) seeking compensation under section 163A of Motor Vehicles Act, 1988 (MV Act) on the averments that their son Javed (18 years old) had died as a result of the motor vehicular accident that had occurred on 15.10.2007 in the area of police station Dabri, he having been crushed by bus bearing registration No.DL 1P 4210) (the bus) under the flyover of Dwarka Gate, Palam. The claim petition stated that the bus was driven by Darshan Singh (who was shown in the array as third respondent), he having since died and substituted by his wife Smt. Babita (fourth respondent herein). It was

further stated that the bus was owned by Smt. Neelam (third respondent) and insured against third party risk with New India Assurance Co. Ltd. (appellant) both of whom were impleaded as first and second respondents before the tribunal.

2. The owner and insurer of the bus contested by filing written statements and taking the position that no accident involving the bus, as alleged, had occurred. The tribunal held inquiry in the course of which the first claimant (first respondent) appeared as the sole witness (PW1) on the strength of his affidavit (Ex.PW1/A). During his cross examination, he admitted that he was not an eye witness to the accident and had not participated even in the investigation of the case registered by the police vide first information report (FIR No.853/07) of police station Dabri. The claimants, however, also relied on the certified copy of the final report that had been submitted by the police in terms of Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on conclusion of the investigation into the FIR.

3. The tribunal framed issues, the prime (the first) one being to address the basic question as to whether the death of Javed had occurred due to an accident arising out of use of the bus. The said issue was answered in the affirmative, in favour of the claimants, on the basis of report under Section 173 Cr.P.C. submitted by the police in the corresponding FIR. The reasons set out by the tribunal for finding returned on the said issue may be quoted in extenso, as under :

“27. Since present petition is filed under Section 163 A of the Motor Vehicles Act, only it is to be proved that the fatal

injuries took place due to accident arising out of the use of Motor Vehicle in question.

28. There is no eye witness examined in this inquiry by the claimants to prove the involvement of the offending vehicle in question.

29. However, claimants have filed certified copy of Final Form Report under Section 169 of Cr.P.C.

30. This report was filed under Section 169 of Cr.P.C. because during investigation driver of the offending vehicle had died.

31. This Final Form Report is filed in FIR No. 853/07 which was registered under Section 279/304 A of IPC against the driver of the offending vehicle.

32. In this report, statement of Sh. Mohd. Mustafa S/o Sh. Mohd. Ismial was recorded under Section 161 of Cr.P.C. in which he has stated before the Investigating Officer that on 15.10.07, he was going from Nangli Devi to Nasirpur Village in Bus Route No. 764 bearing registration no. DL-1P-4210 Blue Line. There was a lot of rush in the bus and the bus driver was driving the bus in a rash and negligent manner. He had further stated that when the bus reached near Palam-Dwarka Fly Over, one boy was dragged with the bus and in spite of lot of noise made by this witness, the driver did not stop the bus and the said boy after some distance fell down and suffered injuries on his private parts. The driver continued to drive the bus in a rash and negligent manner and stopped the same after some distance. PCR came at the spot and removed the injured to the hospital. The driver of the bus was also arrested by the police. This witness had also stated that the site plan was prepared by the Investigating Officer on his instructions.

33. Though the owner of the vehicle is aggrieved by implicating of her vehicle in the accident but perusal of records shows that she has not filed any written statement though certain documents are on record in support of her contention that the vehicle is not involved in the accident.

34. These documents are certified copy of complaint under Section 200 of Cr.P.C. filed by the owner in the court of Ld. ACMM alleging therein that the vehicle on the date of accident was parked and was not plying on the road as there was a strike call given by blue line buses.

35. Owner has also filed certified copy of order dated 14.01.08 passed by the Ld. M.M. directing SHO of P.S. Dabri to register an FIR in the present case under relevant provisions of law and file report.

36. A photocopy of order passed in Writ Petition (Criminal) No. 878/07 dated 26.11.07 is also filed on record where the Hon'ble High Court of Delhi has observed that the death prima facie does not appear to have been caused by road accident.

37. The owner has also filed on record copy of MLC dated 23.10.07 where cause of death is shown to be "Assault".

38. There are certain complaints given by the owner to higher police officials against false implication of her vehicle in the accident. The owner has placed on record these complaints before this Tribunal.

39. Counsel for insurance company has also examined a private Investigator, Sh. Munshi Ram, who stated in his report report Ex. R1W1/A that involvement of the vehicle in question in the accident is ruled out.

40. However, it is also a fact that there is no formal reply filed by the owner of the vehicle. The owner of the vehicle has not come in the witness box to prove false implication of her vehicle in the accident.

41. In a complaint given on behalf of the owner of the vehicle to the Commissioner of Police on 25.10.07, the husband of the owner had stated that at the time of accident his bus was parked and in a stationary condition and its driver and other staff was sitting in it.

42. Although the driver had died during pendency of this claim petition but the owner did not examine the said other staff

present in the bus to show that their vehicle is falsely implicated in the accident.

43. This Tribunal does not know the fate of directions given by Ld. M.M. on 14.01.08 directing concerned SHO to register FIR and file the report.

44. It is settled principle of law that present proceedings are in the nature of an inquiry. Statement of a witness recorded under Section 161 of Cr.P.C. is sufficient for the Claims Tribunal to connect the offending vehicle with the accident.

45. The post mortem report is also suggesting cause of death as road traffic accident. Though there is an injury on private parts of the claimants but that in itself does not prove that it is not a case of Road Traffic Accident but a case of "Assault".

46. Even the owner has not proved post mortem report as per which cause of death is "Assault". Only a photocopy of so called post mortem report is filed on record. No witness was summoned with the records from Deen Dyal Upadhyay Hospital to show that the death of the deceased was as a result of "Assault".

47. Therefore, this Tribunal is inclined to hold that deceased had met with fatal injuries in a road traffic accident involving use of vehicle no. DL-1P-4210.

48. Therefore, issue no. 1 is decided in favour of claimant and against the respondents."

4. The grievance of the appellant (insurer) is that since the respondents had joined issue by pleading that there was no involvement of the bus in the occurrence wherein Javed died, the tribunal, should have called upon the claimants to prove the necessary facts by some evidence. It is submitted that mere reference to the statement of a person who may have been examined under Section 161 Cr.P.C. by the police during investigation into the FIR could not have been taken as clinching material, particularly in the face of observations of this Court in the order dated 26.11.2007 passed in

writ petition (Crl) No.878/07 to the effect that the death *prima facie* had not been caused in a road accident and also in the teeth of observations that the medico legal certificate dated 23.10.2007 showed the cause of death to be assault rather than injuries suffered in a road traffic accident.

5. The approach taken by the tribunal cannot be sustained. The report of the police investigation cannot be assumed to be the material that provides the entire truth. The tribunal is duty bound to hold an inquiry and call upon the claimants to prove their case by requisite evidence. It is not a case where evidence was not available. After all, the particulars of the eye witness (Mohd. Mustafa son of Mohd. Ismail), to whose eye witness account reference is made in the report of the police, has been available and could and should have been called in to depose.

6. In the above facts and circumstances, the appeal of the insurance company must be allowed. At the same time, however, this cannot be the end result of the claim case. In all fairness, the claimants deserve to be given another opportunity to bring home their claim that the death had occurred on account of use of the bus which was insured against third party risk with the appellant insurance company by adducing necessary evidence.

7. Thus, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry in the course of which endeavour shall be made to call in the eye witness referred to in the police report. Needless to add, the parties which contest the claim case shall be entitled to cross examine the witness(es) who are examined in the further inquiry and also lead evidence in rebuttal, if any.

8. The parties are directed to appear before the tribunal for further proceedings on 11.07.2016.

9. The insurance company had deposited the awarded amount with upto date interest with the Registrar General of this Court in terms of order dated 29.05.2013. The said amount shall be transferred by the Registrar General to the concerned tribunal which shall retain it in a fixed deposit receipt in a nationalized bank for a period of six months to be renewed from time to time and utilize it for satisfying the award, if passed, or refund it, as the case may be. All endeavour shall be made by the tribunal to conclude the inquiry for fresh adjudication as expeditiously as possible, preferably within six months of the date of first appearance fixed as per above directions.

10. The statutory amount, if deposited, shall be refunded.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 19, 2016
VLD