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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25th February, 2016

+ **MAC APPEAL No.573/2012**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

Versus

KESHANTI & ORS.

.... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Claim petition under Section 163-A of the Motor Vehicles Act, 1988, registered as Suit No. 990/2010, was preferred by the first respondent herein seeking compensation on account of death of her husband Panchu Ram in a motor vehicular accident involving two vehicles i.e. Rural Transport Vehicle (RTV) bearing registration No. DL IVA 0639 driven by the second respondent herein and owned by the third respondent herein, it admittedly being insured against third party risk for the period in question with the appellant herein (impleaded as party respondent No.3 in the claim petition) and the other, also RTV bearing registration No. DL IV A 3314 driven by the fourth respondent herein and owned by the fifth respondent herein. The motor accident claims tribunal, by judgment dated 5th March, 2012, awarded compensation in the sum of ₹ 5,26,000/- with interest @ 9 % per annum

from the date of filing of the petition till realization. Since the accident had occurred due to involvement of both the above mentioned vehicles, the drivers of each along with their respective owners were held jointly and severally liable. The appellant insurance company was held contractually accountable. The appellant was directed to pay the entire compensation but granted right to recover 50 % of the said awarded amount from the owner (insured) of the other vehicle no. DL IVA 3314 i.e. the fifth respondent.

2. The grievance of the insurance company in appeal at hand is restricted to the additional responsibility fastened on it to pay the entire awarded compensation even though it had nothing to do with the other vehicle or with its insurance. Since no insurance company was impleaded respecting the said other vehicle, and the driver and owner of the said other vehicle also are not shown to have claimed that it was covered under any insurance policy against third party risk for the period in question, it is vivid that the owner of the said other vehicle (i.e. fifth respondent herein) had no such insurance policy on which he could expect to be indemnified with regard to his liability.

3. In the facts and circumstances proved, the liability had to be shared and appears to have been correctly apportioned in equal ratio between the driver/owner of each vehicle. Thus, the liability in contract, and in law, of the appellant insurance company is to indemnify only to the extent of 50 % which is the liability fastened on the person insured in its respect.

4. For the foregoing reasons, the direction in the impugned judgment to the appellant insurance company to pay the entire awarded compensation to

the claimants, though with liberty to recover the same from the fourth and fifth respondents herein is set aside.

5. It is noted that in terms of the directions in order dated 21st May, 2012, the appellant insurance company has already deposited 50 % of the awarded compensation with upto date interest which was released in terms of subsequent order dated 24th January, 2014. Thus, the appellant insurance company has already discharged its contractual and statutory responsibility.

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

7. The appeal is disposed of in above terms.

8. The Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 25, 2016

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