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

**Date of Decision: 28th March, 2016**

\+ **MAC.APP. 661/2012**

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Ravi Sabharwal, Adv.

versus

VINOD KUMAR & ANR. ..... Respondents

Through: Mr. S.N. Parashar, Adv.

\+ **MAC.APP. 663/2012**

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Ravi Sabharwal, Adv.

versus

VISHAL @ KHUSHAL & ANR. ..... Respondents

Through: Mr. S.N. Parashar, Adv.

\+ **MAC.APP. 668/2012**

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Ravi Sabharwal, Adv.

versus

SURAJ & ANR. ..... Respondents

Through: Mr. S.N. Parashar, Adv.

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. On 20.10.2005 motor vehicle described as Tata Tempo No. DL 1LB 2958 (the offending vehicle) was owned by Jogender Kumar @ Yogender Kumar, second respondent in these appeals, it being concededly registered as light goods vehicle meant for being used as a commercial vehicle, and admittedly insured against third party risk with the appellant insurance company (insurer). On the said date (20.10.2005), the owner had driven it carrying 32 persons with a dead body to the cremation ground. On the return journey, the said 32 persons were again travelling as passengers when it met with an accident in the area of Dwarka Mandir, Welcome, Delhi striking against a road divider and turning turtle resulting in injuries being suffered by several of the said persons, twelve of whom brought claim petitions under Section 166 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal). The said twelve claim petitions included MACT Suit No. 561/09/06 instituted on 28.7.2006 by Vinod Kumar (first respondent in MAC Appeal No. 661/2012), MACT Suit No. 560/09/05 instituted on 24.11.2005 by Vishal @ Khushal (first respondent in MAC Appeal No. 663/2012) and MACT Suit No. 564/09/05 instituted on 24.11.2005 by Suraj, son of Guru Charan (first respondent in MAC Appeal No. 668/2012). In each of the said claim cases, the insurer and the driver -cum -owner of the offending vehicle were impleaded as respondents.

2. The tribunal held inquiry and, by common judgment passed on 16.03.2012, granted compensation in each case. In the cases of the first respondents in these appeals, as aforementioned, compensation in the sum of

₹ 81,100/-, ₹ 49,300/- and ₹ 33,300/- were granted with interest in their respective favour.

3. The insurance company, while resisting the claim cases, had taken the plea that the registered owner/insured in respect of the offending vehicle had violated the terms and conditions of the insurance policy as the goods vehicle had been allowed to be used for carrying passengers. It was argued before the tribunal, on the strength of evidence led, that the vehicle being registered as light goods vehicle and having been insured as such, carrying of the gratuitous passengers could not be covered by the third party risk undertaken. The tribunal rejected this contention insofar as the compensation payable to the first respondents in these appeals is concerned on the ground that the insurance policy (Ex.R2W1/A) indicated the permissibility of the vehicle carrying goods upto 5300 kg. in weight with three persons. Thus, while compensation awarded in the case of other claimants was directed to be borne by the registered owner/insured, the liability to pay the compensation in these three cases was fastened against the insurer.

4. Inspite of notice, the second respondent (the registered owner/insured) has chosen not to appear to contest these appeals.

5. On perusal of the insurance policy (Ex.R2W1/A), this Court finds that the reading of the insurance contract by the tribunal was erroneous. The liability undertaken by the insurance company in respect of the offending vehicle was in respect of the driver/employee only. There was no contract permitting any gratuitous passengers to be covered by the third party risk.

Since it is undisputed that the claimants involved in these three appeals were gratuitous passengers who were not travelling in the capacity of owner of any goods carried in the vehicle, the liability in their respect could also not have been fastened against the insurance company.

6. By order dated 03.07.2012, in each of these appeals, the insurance company had been directed to deposit the awarded compensation with UCO Bank, Delhi High Court Branch, which were to be held in fixed deposit receipts for a period of six months to be renewed from time to time. The said amounts shall now be released to the respective claimants.

7. The appeals of the insurance company are allowed. It is granted recovery rights against the registered owner/insured in these three cases.

8. Statutory deposits, if made, shall be refunded.

9. The appeals are disposed of in above terms.



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

**MARCH 28, 2016**
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