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

**Date of Decision: 02nd March, 2016**

\+ **MAC.APP. 681/2011 & CM No. 13654/2011**

SAVITRI DEVI & ORS. ..... Appellants

Through: None.

versus

HASAN KHAN & ORS ..... Respondents

Through: Mr. Manoj R. Sinha, Adv. for R-3.

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

**JUDGMENT**

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

1. Om Prakash Gupta, aged 55 years, died in a motor vehicular accident that occurred on 24.11.2004 at about 11.05 a.m. in the area of BSES office, Dilshad Garden, Delhi. He was on foot and was hit by a motorcycle bearing registration No. DL 7S 9973 (the motorcycle) and died in hospital where he was taken for treatment for the injuries sustained. The first respondent Hasan Khan (the driver) and the second respondent Sunil Sehgal (the owner) were impleaded on the allegations that the accident had occurred due to rash/negligent driving of the motorcycle. The motorcycle was concededly insured against third party risk with National Insurance Company Ltd. (the third respondent) which was also made a party to the claim case filed on 07.03.2005 by the widow, two sons and a daughter of the deceased (now the

appellants). The case was registered by the motor accident claims tribunal (the tribunal) as MACT Case No. 108/2005.

2. In the course of inquiry, the insurance company, took the plea that there was breach of terms and conditions of the insurance policy as the driver of the motorcycle was not holding a valid and effective driving license. Evidence to this effect was adduced. The owner (the second respondent), however, pleaded that he had already sold the motorcycle to the first respondent prior to the date of accident. But, no evidence in support was submitted.

3. The tribunal awarded compensation in the sum of Rs. 8,40,000/- with interest levied from the date of petition till realization holding the driver and owner jointly and severally liable. The contention of the insurance company about breach of terms and conditions of the insurance policy was upheld and no liability was fastened on it.

4. The appellants (claimants) preferred this appeal with application (CM No. 13654/2011) for condonation of delay, *inter alia,* contending that they have not been able to recover the awarded compensation from the principal tortfeasor or from the person held vicariously liable. The main submission made on their behalf is that the insurance company could not have been exonerated of its statutory liability against third party risk and, thus, the tribunal's view on this subject is not correct.

5. The appeal has been resisted only by the insurance company. Its prime contention is that the appeal has been filed with unexplained delay

and if the liability were to be fastened on it, it would be equally difficult for it to recover the amount from the insured.

6. The appellants rely on *Oriental Insurance Company Ltd. vs. Rakesh Kumar MAC Appeal No. 329/2010* a judgment rendered by a learned Single Judge of this court to seek payment by the insurer. In this context, reference may also be made to *United India Insurance Company Ltd. V. Lehru & Ors.* (2003) 3 SCC 338 and *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297. The delay by itself should not defeat the interest of justice, particularly in cases of this benevolent jurisdiction. The settled law that the insurance company must abide by its responsibility in terms of the third party insurance policy though it may claim the right to recover should have been applied by the tribunal to the case at hand. The delay in filing appeal is condoned but with rider that insurer would not be burdened with interest for the period of delay.

7. Since the tribunal reached the finding of fact that there was breach of terms and conditions of policy since the driver of motorcycle did not have a valid driving license, the said finding not having been challenged by the driver or the owner/insured, its consequences would have to follow. But the rights of the claimants cannot take a back seat. The award has to be satisfied first.

8. In above view, the insurance company is directed to pay the compensation to the claimants in terms of the impugned judgment/award. After having discharged the said liability, the insurance company will be at liberty to take out appropriate proceedings before the tribunal to recover the said amount from the insurer (the second respondent herein). The amount

payable in terms of the impugned award shall exclude interest liability for the period of 1084 days i.e. the period of delay in filing this appeal.

9. The appeal is disposed of in above terms.

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

**MARCH 02, 2016**
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