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

Date of Decision: 4th April, 2016

\+ **MAC.APP. 607/2013**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pradeep Gaur & Mr. Amit Gaur, Advs.

versus

SANGITA BASORE& ORS ..... Respondents
Through: None.

\+ **MAC.APP. 669/2013**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pradeep Gaur & Mr. Amit Gaur, Advs.

versus

SURESH BASORE& ORS ..... Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Two claim cases (petition Nos. 164/2011 & 46/2012) were brought before the motor accident claims tribunal (tribunal) on 21.07.2011 and 24.02.2012 respectively, both of which were found to be arising out of the same motor vehicular accident that had occurred on 07.06.2010 at 23.30 hours at Village Kubra, police station Bahri, District Sidhi, Madhya Pradesh involving motor vehicle described as Tata 407 bearing registration No. MP

53 GA 1083 (the offending vehicle) admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). In the said accident, Ram Naresh Basore died while his brother Suresh Basore suffered injuries. The first claim case was preferred by the widow and the other dependent family members of Ram Naresh Basore while the second case was filed by Suresh Basore himself. In both the petitions, the driver (Manoj Kumar Verma) and owner/insured (Bhanu Prakash Kacher) of the offending vehicle were also impleaded as parties in addition to the insurer. Both the claim petitions were clubbed together and decided by common judgment dated 03.05.2013 by the motor accident claims tribunal (the tribunal) awarding compensation fastening the liability on the insurer to pay.

2. The insurance company has come up with these appeals and presses the same only on one contention, namely, that the deceased Ram Naresh Basore and the injured/claimant Suresh Basore were gratuitous passengers in the offending vehicle, and, therefore, were not covered by third party risk under the insurance policy issued by it. Pressing home this argument, the insurance company referred to investigation report submitted by Mr. Sanjeev Singh Chauhan, Advocate engaged by the insurance company. The said report (pages 255-267 on the tribunal's record) on the file of petition No. 164/2011, *inter alia,* indicating that the local police which had registered the first information report (FIR) No. 125/2010 had noted that seven persons travelling in the offending vehicle were lying injured and crying at the scene of accident when the investigating officer had arrived at the place in question. The investigator had also reported that the persons injured had been travelling in the said vehicle with their goods.

3. During inquiry before the tribunal, Suresh Basore (injured/claimant) had appeared (as PW-1) on the strength of his affidavit (Ex.PW-1/A) on which he was cross-examined on 18.09.2012. Since the two cases were clubbed and decided by common judgment, the said evidence has been considered by the tribunal for purposes of both the cases. In the said affidavit Suresh Basore had, *inter alia,* stated that at the time of being hit by the offending vehicle he was going on foot. He would add during his cross-examination that his brother the deceased (Ram Naresh Basore) was also on foot when he was hit by the offending vehicle as a result of which he had died. Crucially, in the said testimony, Suresh Basore had affirmed on oath that he, his brother and certain others had got down from the bus and were moving on foot when they were hit by the offending vehicle. He denied that there was any person travelling in the offending vehicle at that point of time except the driver on board.

4. The report of the investigator (Ex.R3W1/1) was proved by Harinder Singh (R3W1), administrative officer of the insurance company. The said witness brought on record the insurance policy (Ex.R3W1/3) copy of the final report of the investigating police officer (Ex.R3W1/2) submitted at conclusion of the investigation into the FIR. The witness (R3W1) examined by the insurer is not in a position to vouchsafe what were the facts found during such investigation by the person engaged by the insurer. It was for the said investigator to come in the witness box and affirm the facts discovered by him. The reference to the contents of the FIR and the final report submitted by the police is misplaced. In the FIR, the names or particulars of the persons who were found lying injured at the scene is not disclosed. Therefore, it cannot be said that the persons referred to therein

would include Ram Naresh Basore (deceased) or Suresh Basore (injured/claimant). When Suresh Basore (PW-1) was examined it was not even suggested to him in any manner that he had been travelling in the offending vehicle at any stage with his brother as gratuitous passengers.

5. For the foregoing reasons, the appeals are found to be devoid of substance and, thus, are liable to be dismissed.

6. The insurance company had been directed by order dated 12.07.2013 (in MAC Appeal No. 607/2013 to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified. Out of the said deposit 80% is released to the claimant in the said case. Stay in the other appeal (MAC Appeal No. 669/2013) was declined by order dated 24.07.2013. Presumably, the insurer would have satisfied the award in the said case.

7. The balance lying in deposit as per directions in MAC Appeal No. 607/2013 shall now be released to the claimants in the said case in terms of the impugned judgment. If the insurer has not satisfied the award in the other case (MAC Appeal No. 669/2013) it must do so positively within 30 days.

8. Statutory deposit in both the appeals, if made, shall be refunded.

9. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 04, 2016
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