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

Date of Decision: 08th March, 2016

\+ **MAC.APP. 705/2012 &CM No. 11433/2012**

UNITED INDIA INSURANCE CO. LTD ..... Appellant

Through: Mr. K.L. Nandwani, Mr. P. Acharya & Ms. Nitika Chaudhary, Advs.

versus

BABY UGULESA & ORS ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1

\+ **MAC.APP. 901/2013 & CM No. 15869/2013**

UNITED INDIA INSURANCE CO. LTD ..... Appellant

Through: Mr. K.L. Nandwani, Mr. P. Acharya & Ms. Nitika Chaudhary, Advs.

versus

HASINA KHATUN& ORS ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1 to 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In both these appeals identical questions of law are raised by the insurance company concerning two different claim petitions, both having arisen out of same motor vehicular accident that had occurred on 28.02.2009 at about 6.00 p.m. involving truck bearing No. DL 1LE 2930 in which

Mohd. Budhan and Mohb. Etabul Alam were travelling as labourers tasked with the duty of loading and unloading of goods, the said truck admittedly having been insured against third party risk with the appellant company (insurer) for the period in question.

2. Mother of deceased Budhan and Hasina Khatoon, widow of Mohd. Etabul Alam (for herself and on behalf of other legal heirs of the deceased) had two brought claim petitions before the motor accident claims tribunal (the tribunal) under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation on account of deaths of Mohd. Budhan & Mohd. Etabul Alam in the said accident. Both the petitions were decided by the tribunal by separate judgments dated 22.05.2012. In the case of death of Mohd. Budhan, the tribunal awarded compensation in the sum of Rs. 5,28,735/- while in the case of Mohd. Etabul Alam, the tribunal awarded Rs. 12,66,204/- as the compensation. Both the awards were to carry interest @ 9% from the date of filing of the petition till realisation. The insurance company, by appeals at hand submits that in terms of Section 147 MV Act, its liability is restricted to the amounts payable as compensation under the Employees' Compensation Act, 1923.

3. The learned counsel for the claimants in both these cases fairly agreed to the above submission on behalf of the insurance company. On being asked, the learned counsel on both sides have jointly worked out the amount payable as compensation in these cases in terms of Section 4 of the Employees' Compensation Act, 1923 and submitted that the liability of the insurance company under the third party insurance cannot exceed the sum of Rs. 4,32,641/65 in each case. In above view, the directions in the impugned judgment are modified. It is directed that the insurance company shall be

liable to pay only compensation to the extent of Rs.4,32642 (rounded off) in each of the aforementioned cases, of course, with proportionate interest added. The balance amount of compensation computed and awarded by the tribunal shall, however, continue to be recoverable from the principal tortfeasor or the person held vicariously liable.

4. The learned counsel for the appellant further pointed out that the tribunal, by directions in (para 21 of) the impugned judgment in these cases had also awarded Rs.70,000/- as lawyer's fee with Rs. 15,000/- towards pocket expenses. There being no justification for the said directions. The same are hereby set aside.

5. The appeals stand disposed of in above terms.

6. In both these appeals, the insurance company had been directed to deposit the awarded compensation after ignoring counsel's fee and pocket expenses, with UCO Bank, Delhi High Court Branch, within the period specified and upon such deposit being made 50% was allowed to be released to the claimants.

7. The balance amount lying in deposit in the case relating to MAC Appeal No. 705/2012 shall be arranged to be released to the claimant by the Registrar General, to the extent of liability of the insurance company, refunding the excess, along with statutory deposit (if made) to it. The claimant in the said case shall have the liberty to take out appropriate execution proceedings before the tribunal for recovery of the remainder from the other respondent(s) in the claim petition.

8. Since 50% of the awarded compensation in the case relating to MAC Appeal No. 901/2013, that was deposited seemingly appears to be much in excess of the liability now restricted against the insurance company, it is

granted right to recover the amount paid in excess to the claimants from the other respondent(s) in the claim petition. The balance lying in deposit with UCO Bank, Delhi High Court Branch shall be arranged by the Registrar General to be refunded to the insurance company with statutory deposit (if made). As in the other case, the claimants in the case relating to MAC Appeal No. 901/2013 shall also have the liberty to recover the amount from the other respondents in the claim petition.

9. The appeals stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 08, 2016
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