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

Date of Decision: 8th April, 2016

+ **MAC.APP. 680/2011 & CM No.13647/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs.

versus

USHA GUPTA AND ORS.

..... Respondent

Through: Mr. Nitin Yadav, Adv. and Mr. S K
Sharma, Adv.

+ **MAC.APP. 711/2011 & CM No.14394/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs.

versus

MEGH SINGH AND ORS.

..... Respondent

Through: Mr. Nitin Yadav, Adv. and Mr. S K
Sharma, Adv.

+ **MAC.APP.712/2011 & CM No.14401/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs.

versus

JEET SINGH AND ORS.

..... Respondent

Through: Mr. Nitin Yadav, Adv. and Mr. S K
Sharma, Adv.

+ **MAC.APP. 715/2011 & CM No.14429/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Adv.

versus

VINITA KUMARI AND ORS.

..... Respondent

Through: Mr. Nitin Yadav, Adv. and Mr. S K
Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 22-05-2010, at about 11.15 PM, a motor vehicular accident occurred involving two motor vehicles including a three wheeler scooter bearing registration No.DL 1RG 8238 (TSR) and a Honda City car bearing registration No.CH 04H 6960 (the car), in the area of Gopinath Market, opposite petrol pump on road from Palam to Dhaula Kuan (Delhi Cantt.) New Delhi. The TSR was being driven by Rajkumar and was carrying three passengers including Ved Prakash Gupta, Megh Singh and Jeet Singh. The car was admittedly driven by Nivedita, the vehicle being owned by her husband Col. Rahul Singh and concededly insured against third party risk with Bajaj Allianz General Insurance Co. Ltd. (the appellant) for the period in question. As a result of the collision, Raj Kumar, the TSR driver and Ved Prakash Gupta, one of the passengers in TSR died due to the injuries

suffered. The other two passengers Megh Singh and Jeet Singh also suffered injuries.

2. Four accident claim cases were brought before the motor accident claims tribunal (tribunal), two on account of deaths of Ved Prakash Gupta and Raj Kumar and the others for compensation on account of injuries suffered by Megh Singh and Jeet Singh. All the four petitions were clubbed and a common inquiry was held.

3. The tribunal, by common judgment dated 09.03.2011, decided all the abovesaid claim cases upholding the contention of the respective claimants that the accident had occurred due to rash driving of the car by Nivedita Singh. Nivedita, Raj Kumar, the TSR Driver and Ved Prakash Gupta, one of the passengers in the TSR had statedly consumed alcohol prior to the accident. While the factum of Ved Prakash (deceased), one of the passengers in the TSR, having consumed alcohol is of no relevance to the issues required to be addressed, the plea of drunken driving on the part of the other two was considered but rejected by the tribunal. In the context of the TSR driver, it was observed that the evidence clearly showed that the accident had occurred wholly on account of rash driving of the car by Nivedita Singh inasmuch as she had used uncontrollable speed and was on the move in a wrong lane resulting in head-on collision with the TSR, there being no contributory negligence on the part of the TSR driver. The contention about breach of terms and conditions of the insurance policy on the ground that the car driver was reckless - she having driven the vehicle at a stage when she had consumed alcohol - was rejected for the reason that the extent of influence of alcohol had not been proved.

4. The tribunal awarded compensation in all the four cases and directed the insurance company to pay.

5. By the appeals at hand the insurer of the car has reiterated that the evidence on record indicates that the car driver was at the steering wheel under the influence of alcohol. Reference is made in this context to the copy of the MLC on record (page 100 of the paper book of MAC.APP.No.680/2011), in respect of Nivedita Singh, the document showing intake of alcohol revealed by the breath analyzing test to the extent of 150 mg per litre which, per the submission, should be taken as breach of the essential terms and conditions of the insurance policy, being deliberate, conscious and voluntary act on the part of the car driver, assumably having contributed as cause of accident wherein two vehicles had collided against each other head-on, it presumably being in the knowledge of the insured. It is also argued on behalf of the insurer in these appeals that since the TSR driver is also proved to have been driving under the influence of alcohol, given the fact that the two vehicles had collided head-on against each other, a finding should have been returned that he had contributed to the cause for accident and therefore, in the claim case arising out of his death, the effect of contributory negligence should have been factored in. Reference in this context is made to the report of the forensic science laboratory (Ex.R1W2/1) which indicated that the analysis of the viscera preserved during autopsy on the body of the TSR driver had shown the presence of alcohol to the extent of 192.30 ml per 100 ml of blood.

6. The learned counsel for the insurer relied upon *Bijoy Kumar Dugar v. Bidyadhar Dutta* AIR 2006 SC 1255 to argue that since there was a head-

on collision, contributory negligence on the part of both the drivers is writ large. It has been submitted that though the site plan (page 339 of the tribunal's record in MACT No.19/10) shows that the car had come in the wrong lane at break-neck speed, inasmuch as it had left skid marks for as long as a distance as 45 feet, the collision between the two vehicles took place in the middle of the road along the yellow line painted in the centre dividing it into two carriage-ways, each meant for traffic in the opposite directions, there is sufficient material in the report of the forensic science laboratory to infer that the TSR, moving in the proper lane, could have avoided the collision had he been in proper control of his senses, that is to say that had he not been under the influence of alcohol.

7. *Per contra*, the claimants in the case arising out of death of Raj Kumar, the TSR driver, placing reliance on *Jiju Kuruvila v. Kunjujamma Mohan III* (2013) ACC 49 (SC), argued that mere suspicion based on the forensic laboratory report cannot take the place of evidence as to the negligence on the part of the TSR driver.

8. There cannot be a thumb rule that in case of the head-on collision the drivers of both the vehicles must be held guilty of contributory negligence. As shown by the evidence in the case at hand, the car driver had come in wrong lane and at reckless speed. The skid marks for a long distance tell their own story. She was not in a position to control the vehicle. The TSR driver, may be on road having consumed alcohol, would have been taken by surprise. It is for this reason that he seems to have steered his vehicle to avoid the collision. It so happened that both the vehicles turned in the same direction and ended up colliding head-on in the centre of the road. The

prime responsibility for this accident, thus, must be placed at the door of the car driver Nivedita Singh. As observed by the tribunal in the impugned judgment there is nothing in the evidence to show that the TSR driver could have averted the accident or the alcohol intake by him had contributed to the cause for collision.

9. The allegation of the car driver having consumed alcohol before the accident has not been proved by any evidence. Mere reference to the MLC cannot suffice. The observation in the MLC about the alcohol intake was based on some report which required to be proved strictly. No such evidence having been adduced, inferences cannot be drawn merely from the notings in MLC, which also do not bear any authentication.

10. It does appear that the car driver had admitted in the course of the inquiry that she was prosecuted on the charge under Section 185 of Motor Vehicles Act, 1988 for drunken driving. Mere prosecution does not mean the allegation has been proved. It could have been a different position if the result of such prosecution at least had been brought on record. In absence of such material, the conclusion reached by the tribunal in this regard cannot be faulted.

11. Be that as it may, in the face of evidence on record, it cannot be said that the findings recorded by the tribunal on the above issues are perverse or returned on reasoning which is illogical. Sitting in appeal, it will not be proper for this Court to set aside the said conclusions only because different conclusions could also possibly have been drawn.

12. Thus, the appeals of the insurer seeking exoneration or grant of recovery rights deserve to be rejected.

13. The tribunal, however, had also awarded pleaders' fee in the sum of Rs.20,000/- in three of the claim cases (MACP Nos.14/10, 401/10, 400/10) and Rs.12,000/- in MACP No.19/10. The said directions for payment of pleaders' fee, being uncalled for, are set aside.

14. Initially, by orders dated 27.07.2011 in MAC.APP.No.680/2011, 04.08.2011 in MAC.APP.No.711/2011, MAC.APP.No.712/2011 and MAC.APP.No.715/2011, the execution of the impugned awards in all these four cases was stayed with direction that the insurer shall deposit the entire awarded amount which was to be kept in fixed deposit receipts by the Registrar General for a period of three months to be renewed from time to time. By identical orders dated 17.01.2013, 50% of the awarded amount was directed to be released to the respective claimants. The Registrar General shall now release the balance lying in deposits in terms of the impugned awards.

15. Statutory amounts, if deposited, shall be refunded.

16. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 08, 2016
VLD