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

Date of Decision: 13.05.2016

+ **MAC.APP. 626/2014 and CM No.11189/2014**

THE NEW INDIA ASSURANCE CO. LTD Appellant

Through: Mr. R.K. Tripathi, Advocate

versus

SMT. HEMLATA & OTHERS Respondents

Through: Mr. Pawan Verma and Mr. Sunil Kumar,
Advocates

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Jitender Verma was travelling in a car bearing registration no.RJ-07CA-0625 (car) on the way from Shri Ganga Nagar to Delhi on the night intervening 20 & 21.08.2009. In the wee hours, after mid-night, when the car had reached the area of PS Agroha on GT Road, there was a collision involving the car and the truck bearing registration no.HR-61-4491 (truck), both colliding against each other, head-on. As a result of the said collision, Jitender Kumar and certain other persons travelling in the car including its driver described as Vikas Bhardwaj died. The wife, children and widowed mother of Jitender Verma, first to fourth respondents herein (claimants) instituted an accident claim case (MACP 02/2011) on 07.01.2011 before the

Motor Accident Claims Tribunal (tribunal) at Kakardooma Courts, Shahdara, Delhi, seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act). In the said case, the owner and insurer of the car were impleaded (as first and second respondents), they being the fifth respondent and the appellant herein, in addition to the driver, owner and insurer of the truck (third to fifth respondents before the tribunal), they now being the sixth and seventh respondents, in addition to the appellant, before this court in this appeal. In the claim petition, negligence was attributed both to the car driver and the truck driver.

2. The tribunal held inquiry and by judgment dated 31.03.2014, held that the claimants had proved their case, holding both the car driver (who had died in the accident) and the truck driver (respondent before the tribunal) guilty of contributory negligence to the extent of 90% and 10% respectively. It awarded compensation in the sum of ₹49,12,225/- with interest at the rate of 9% p.a. directing the appellant (insurer of both the vehicles) to pay the same to the claimants with interest at 9% p.a. from the date of filing of the petition till realization.

3. The appeal at hand is pressed by the insurance company (insurer of both the vehicles) primarily to question the finding on guilt. The appellant seeks to place reliance on the certified copies of the documents that purport to be relating to investigation of a case registered by the local police concerning the accident in question, the same having been submitted as Annexure A-1 (collectively). The insurer also relies on the copy of the judgment dated 01.05.2012 passed by a tribunal at Hissar (Haryana) on another accident claim petition (petition no.56/10/11) which had been

instituted by parents of Vishal Chaudhary, another person to have died in the same accident, he also being one of the persons travelling in the car at the relevant point of time. It is pointed out that Manoj Kumar, the witness examined by the claimant in the present case (as PW-4), had also been examined in the claim case before the tribunal at Hissar (as PW-3). The insurance company submits that given the corresponding record of the police case where the said very Manoj Kumar had given a statement to the investigating officer denying any negligence on the part of anyone, the tribunal at Hissar had found the story of negligence to be fabricated and, on such conclusion, dismissed the claim case relating to death of Vishal Chaudhary. On being asked, it is fairly conceded by the counsel for the insurer that the appeal preferred by the claimants against the said judgment of the tribunal at Hissar is still pending before the High Court of Punjab and Haryana at Chandigarh. In this view, it cannot be said that decision in the case relating to death of Vishal Chaudhary has attained finality.

4. The Tribunal, by the impugned judgment, found the evidence of Manoj Kumar (PW-4) on the strength of his affidavit (Ex. PW4/A) worthy of reliance and, on that basis, returned a finding holding the drivers of both the vehicles to be guilty of negligence. The negligence on the part of the car driver has been attributed to the extent of 90% since it was moving on the road at break-neck and uncontrollable speed while the driver of the truck was found to be similarly at fault to the extent of 10% on the finding that he had parked his truck in the way of the traffic on the road with no caution lights working. This finding, however, has had no impact on the case of the claimants in as much as, mercifully for them, the insurer of both the vehicles

is the same company (i.e. the appellant). Noticeably, the deceased in the present case was not the driver of the car and, thus, the negligence on the part of the car driver would not have any adverse effect on the claim relating to his death, he being a third party.

5. Coming to the contention raised by the insurance company, reference to the document relating to the police case of Hissar is misplaced. At the most, the document which purports to be a statement made by Manoj Kumar before the local police would be his previous statement. If his veracity were to be discredited before the tribunal, rules of evidence required that he was confronted with the said previous statement and his explanation in such regard obtained. No such effort having been made, rather the story of some stray animals coming in the way resulting in the car driver losing control was not even suggested to PW-4 during his cross-examination before the tribunal, the argument cannot cut any ice.

6. In above view, the appeal is unmerited and consequently dismissed. Resultantly, the pending application is also dismissed.

7. By order dated 18.07.2014, the appellant had been directed to deposit 50% of the awarded amount with accumulated interest within the period specified, which was allowed to be released to the claimants. The appellant shall now satisfy the award fully by requisite deposit with the tribunal within 30 days, whereupon it shall be released to the claimants in terms of the impugned judgment.

R.K. GAUBA
(JUDGE)

May 13, 2016/yg