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

Date of Decision: 22nd March, 2016

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+ **MAC.APP. 702/2014**

SHANTI

..... Appellant

Through: Mr. Anshuman Bal, Adv.

versus

ASHRAF KHAN & ANR

..... Respondents

Through: Mr. Pradeep Kumar Yadav, Adv. for
R-1

Ms. Suman Bagga, Adv. for R-2

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+ **MAC.APP. 706/2014**

NISHA & ORS

..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

ASHRAF KHAN & ANR

..... Respondents

Through: Mr. Pradeep Kumar Yadav, Adv. for
R-1

Ms. Suman Bagga, Adv. for R-2

6

+ **MAC.APP. 694/2014**

ANITA & ORS

..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

ASHRAF KHAN & ANR

..... Respondents

Through: Mr. Pradeep Kumar Yadav, Adv. for
R-1

Ms. Suman Bagga, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The motor accident claims tribunal (tribunal) by common judgment passed on 29.04.2014 in accident claim cases registered as MACT. Nos.279/08/14, 280/08/14 and 282/08/14 decided the claim petitions that had been presented by the appellants in above captioned appeals seeking compensation under Section 163A of Motor Vehicles Act, 1988 (MV Act) on account of deaths of Dalbir, (son of the appellant in MAC.APP.No.702/2014), Sandeep (husband of the first appellant in MAC.APP.No.706/2014) and Parmod (husband of the first appellant in MAC.APP.No.694/2014) respectively in motor accident that occurred on 03.07.2008 involving use of motor vehicle described as truck bearing registration No. UP 78 BT 1365 (the offending vehicle) concededly owned by the first respondent and insured against third party risk with the second respondent in each of these appeals.

2. The tribunal put all these claim petitions to inquiry on the basis of issues framed, one of which posed the question as to whether the deaths had occurred in an accident involving use of the offending vehicle. It found, on the basis of evidence led, the answer to the said issue in the affirmative. But having held thus, it proceeded to dismiss the claim petitions by the

impugned judgment dated 29.04.2014, *inter alia*, observing that since it had not been brought out as to which out of the three persons who had died was the driver of the Santro car in which they were travelling at the time of its collision against the offending vehicle, the petitions did not deserve to be granted. In reaching the said conclusion, it was noted that the car in question was found to be carrying contraband in the nature of 21 packets of *ganja* weighing 1.47 quintals worth Rs.20.7 crores in the international market, it having been pursued by the enforcement officers of Narcotics Control Bureau. It was noted that a case under the the Narcotic Drugs and Psychotropic Substances Act, 1985 had also been registered against the deceased persons. The tribunal observed that a person cannot be allowed to take benefit of all wrong and, thus, grant of compensation under Section 163A of MV Act or under Section 140 of MV Act would lead to an anomaly which could not have been intended by the legislature.

3. The learned counsel for the insurance company fairly conceded that the approach of the tribunal cannot be upheld. She conceded that the matter required proper inquiry in which the tribunal would have to make a proper endeavour to identify the person who was actually at the steering wheel of the car and the persons travelling in it as passengers to draw a distinction between them. She at the same time, also submitted that the insurance company would request that its contention about contributory negligence should be preserved for it to be addressed by the tribunal when it approaches the matter afresh.

4. In above facts and circumstances, the impugned judgment is set aside. The appeals in all these cases are allowed. The claim cases are remitted to

the tribunal for further inquiry and fresh adjudication. Needless to add, the contentions of all sides are preserved and may be agitated before the tribunal.

5. The parties shall appear before the tribunal on 29.04.2016.

R.K. GAUBA
(JUDGE)

MARCH 22, 2016
VLD

