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

Date of Decision: 22nd February, 2016

\+ MAC.APP. 921/2012

RELIANCE GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

SUBHASH VERMA & ORS

..... Respondents

Through: Mr. Rana Ranjit Singh, Mr. Sidhanth Shanker and Mr. Varun Aggarwal, Advocates for R-1 to R-3
Mr. A.P. Verma, Advocate for R-4&5

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Savitri Thakur allegedly suffered injuries in a motor vehicular accident that had occurred at 10.15 a.m. on 02-02-2011 in the area of Madipur bus stand and died in the consequence. A claim petition was brought before the Motor Accident Claims Tribunal (the tribunal) by her husband and children (first to third respondent herein collectively, the claimants), for compensation under sections 166 and 140 of Motor Vehicles

Act, 1988 (MV Act), *inter-alia,* alleging that the accident had been caused by a car bearing registration no. DL 8CP 5134 (the car) which is concededly owned by the fifth respondent herein and was insured against third party risk with the appellant. It was alleged that the car was driven by the fourth respondent herein (son of the registered owner) in rash/negligent manner and under the influence of alcohol which, according to the claimants, was the reason for the accident.

2. Upon notices being issued, the alleged driver and the owner of the car (impleaded as respondent nos. 1 & 2 in the claim petition) filed written statement joining issue denying the involvement of the car in the accident or any negligence on the part of its driver. The insurance company was also impleaded as a party – respondent and, in its contest, took up usual defences.

3. During the inquiry both the claimants and the driver with owner of the car led evidence. The claimants examined the husband (PW1), who admittedly was not present at the scene of the occurrence and, thus, would not be in a position to vouch safe the case regarding involvement of the car or negligence on the part of its driver. Head Constable Bhim Singh (PW2) was examined to prove the status of the deceased, who was admittedly working as Assistant Sub-Inspector in Delhi Police at the time of death. On the other hand, the contesting respondents examined Sanchit (the fourth respondent herein) as R1W1 on the strength of his own affidavit (R1W1/A) to affirm that there had been no involvement of the car in the accident and that he had been falsely implicated.

4. The tribunal, however, proceeded to award compensation and hold that the claimants had proved the liability of the respondents, on the basis of following observations:

"*RW-2 has denied that accident ever occurred and that there was no collision between his vehicle and the deceased however the report filed by the police ASI Arjun Pandit indicates that the vehicle No. is that of the R-2 and as per photographs filed by the petitioner the same manifest the collision. Furthermore, mechanical inspection was conducted by Sh. Virender Kumar before the court of the Magistrate from where the accident manifest. Keeping in view the fact of the identifying the vehicle as well as symptoms of accident on the vehicle are evident enough to safely conclude that the vehicle was so involved in the collision with the deceased, the offending vehicle was owned by Respondent No. 2, hence the issue is decided in favour of the petitioner and against the Respondents*."

5. The appellant questions the above mentioned findings on facts. It is argued that there is no evidence adduced by the claimants to show either the involvement of the car or negligence on the part of its owner to hold him as the principal tort-feasor or the owner as the person vicariously liable and, in turn, the insurance company being burdened with the responsibility to indemnify.

6. The counsel for the claimants fairly conceded that proper evidence to prove the case about the involvement and fault on the part of the driver of the offending vehicle was not brought before the tribunal under some wrong legal advice. It is submitted that an eye-witness in the form of brother-in-law of the deceased, who was present at the scene and at whose instance the first information report (FIR) had been registered, had been available and it is a case where opportunity to adduce such further evidence deserves to be granted.

7. The counsel for the insurance company submitted that he would have no objection to fresh opportunity for evidence to above affect being adduced

though he would reserve the right to contest such evidence including by way of an effort to show sole or contributory negligence on the part of the deceased.

8. In view of the above facts and circumstances, the impugned judgment and award are set aside. The matter is remitted to the tribunal for further inquiry in accordance with law. The tribunal shall grant further opportunity to the claimants to adduce additional evidence in the light of above submissions. Needless to add, the contesting respondents will be entitled to cross-examine the witnesses to be now additionally examined and will also be entitled to lead evidence in rebuttal, if any.

9. The parties are directed to appear before the tribunal for further proceedings in accordance with law on 28th March, 2016. The statutory deposit, if made by the insurance company, shall be refunded.

10. The appeal is disposed of in above terms.

11. Copy of the order be given *dasti* to all the parties.

R.K. GAUBA
(JUDGE)

FEBRUARY 22, 2016
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