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

Date of Decision: 04th March, 2016

\+ **MAC.APP. 950/2013 & 16653/2013**

NAJNI KHATOON & ORS ..... Appellants

Through: Mr. Sanjeev Srivastava, Adv.

versus

MD SHABBIR & ORS ..... Respondents

Through: Mr. C. K. Gola & Mr. Abhishek Gola, Advs. for R-3

AND

\+ **MAC.APP. 952/2013 & 16657/2013**

MAHFUJ KHAN ..... Appellant

Through: Mr. Sanjeev Srivastava, Adv.

versus

MD SHABBIR & ORS ..... Respondents

Through: Mr. C. K. Gola & Mr. Abhishek Gola, Advs. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Two claim cases under Sections 166 & 140 of Motor Vehicles Act, 1988 (the MV Act), one arising out of death of Tabrez Alam and other arising out of injuries suffered by Mahfuz Khan, registered as suit

no.514/2011 and resulted in judgment dated 19.03.2013 whereby the tribunal awarded compensation in the sum of ₹31,78,200/- to the dependants of the family members of the deceased (the appellants in MAC appeal no.950/2013) and ₹36,428/- to the claimants in the other case (the appellants in MAC appeal no.952/2013), with interest at the rate of nine percent (9%) per annum, holding the driver Mohd. Shabbir of three wheeler scooter bearing registration no.DL-1RL-1817 to be the principal tort-feasor as it was on account of his negligence that the accident had occurred, besides Satender Singh Panwar (the owner of the TSR) found vicariously liable, both being held to be jointly and severally responsible to pay.

2. Noticeably, it was shown to the satisfaction of the tribunal that the TSR was insured against the third party risk for the period in question with Future Generali India Insurance Co. Ltd. (third respondent in these appeals). However, the insurance company resisted the claim on the plea that the driver of the TSR was not holding any driving license. Its said defence was upheld and the insurance company was exonerated by the tribunal, by observations to the following effect:-

> " *The insurance company has pleaded that since the vehicle was being plied without D/L and there had been prosecution proposed under Section 3/181 as well as 5/181 MV Act, the insurance company needs to be discharged. It be observed that the owner has led no evidence in this respect. The notice issued by the insurance company qua production of D/L and permit have remained unanswered. The insurance policy has been proved through R3W1 Shri Ved Vyas Tripathi, Sr.Executive (Legal) of the insurance company and in such circumstances, the insurance company is exonerated from the liability. The owner, Satender Singh Panwar is directed to discharge the liability of the award amount within 30 days from today.*"

3. The claimants in both cases have come up with these appeals referring to the view taken by the learned single judges of this court in cases reported as *United India Insurance Co. Ltd. vs. Jaswant Singh & Ors*., 2013 ACJ 56 and *Mukesh Kumar vs. Kamlesh Devi & Ors.*, 2012 ACJ 2269, contending that instead of being fully exonerated, the insurance company should have been called upon to pay the awarded compensation though it could have been granted recovery rights against the owner (the insured) of the offending vehicle.

4. Having heard arguments, this court finds substance in the contentions raised. Reference needs to be made to the law laid down by the Supreme Court in *United India Insurance Co. Ltd. vs. Lehru & Ors.*, (2003) 3 SCC 338 and *National Insurance Col. Ltd. vs. Swaran Singh & Ors.*, (2004) 3 SCC 297. Pertinently, para 20 of the judgment in *Lehru* (supra) needs to be quoted:-

> "…*Where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly <u>even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured</u>. This is the law which has been laid down in Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view.*" (emphasis supplied)

5. Thus, the directions in the impugned awards are modified. It is directed that the insurance company shall pay the compensation to the

claimants in both these cases by depositing the awarded amount with up-to-date interest with the tribunal within 30 days of this judgment whereupon the same shall be released to the claimants in terms of the directions in the impugned judgment. After making such payment, the insurance company will have liberty to take out appropriate proceedings to recover the compensation thus paid from the owner (the insured) of the offending vehicle.

6. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 04, 2016
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