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

Date of Decision: 8th February, 2016

+ **MAC.APP. 1125/2012 & CM APPL. 18050/2012, 20075/2014**

URMILA Appellant

Through: Mr. Saurabh Upadhyay, Adv.

versus

SUSHMA & ORS Respondents

Through: Mr. Anshuman Bal, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In the claim petition under Section 166 read with Section 140 of Motor Vehicles Act, 1988 (MV Act) taken out on 19.10.2006 before the motor accident claims tribunal (the tribunal) by the respondent nos.1 to 3 (respondents herein), registered as MACT case no.1174/2006, the appellant herein was impleaded as second respondent on the plea that she was the registered owner of motor vehicle described as motorcycle bearing registration no.DL-3ST-9655 (the offending vehicle) on 11.08.2006 when an accident occurred involving the said offending vehicle colliding another motorcycle driven by Manoj Kumar Bhardwaj who died as a result of injuries suffered. It was alleged that the fifth respondent herein was driver of the offending vehicle. It appears that the offending vehicle was not insured against the third party risk during

the relevant period as no insurer was impleaded nor any contention to that effect urged by any of the parties involved.

2. The appellant in the course of contest took the plea that she had already sold the offending vehicle to the fifth respondent herein prior to the date of accident. She led evidence, *inter-alia*, by examining herself (as R2W1) and also examined her brother-in-law Rajesh Kumar (as R2W2). The tribunal noted the contentions and the evidence, *inter-alia*, led through the said two witnesses at length (in para nos.11 & 12 of) the impugned judgment dated 30.05.2012 whereby the claim petition was decided. It needs to be noted that the evidence adduced on behalf of the appellant was to the effect that the offending vehicle had been sold on 07.02.2005, for consideration, to the fifth respondent herein against due delivery of the registration paper and Form nos.29 & 30 besides formal intimation to the transport authority on 09.02.2005 in terms of Section 50 of the MV Act.

3. The tribunal awarded compensation in the sum of ₹37,57,500/- with interest @ 9% per annum from the date of institution of the petition (19.10.2006) till realization.

4. Against the above backdrop, the tribunal held both the appellant and the fifth respondent herein (respondent nos.1 & 2 before the tribunal) jointly and severally liable on the basis of following reasoning:-

“Respondents could not bring on record any evidence to point out that they are not liable to pay compensation amount as assessed by the court or any term or condition of the insurance policy was breached by the insured or it has any limited liability. However, R2W3 deposed that particulars of the vehicle in question were

existed in the name of respondent no.2 i.e. Smt. Urmila on the date of accident because the transferee of vehicle has not applied for transfer of the vehicle in question in his name. Keeping in view the existence of valid insurance policy, respondent nos.1 & 2 are jointly and severally become entitled to pay entire compensation amount in view of judgment of Hon'ble Supreme Court in case cited as 2003 ACJ1950."

5. It appears that the tribunal's approach was wholly erroneous and misdirected. It failed to bear in mind that it was nobody's case that there was an insurance cover against third party risk for the relevant period. It failed to adjudicate on the contention of the appellant that she was not liable once she had transferred the vehicle in favour of the fifth respondent herein. It failed to apply its mind to the evidence led with regard to her claim as to due compliance with requirements of Section 50 of MV Act and rules framed under the said law.

6. In above facts and circumstances, the finding returned fastening liability on the appellant cannot be upheld. The issue requires proper adjudication. Thus, the appeal to the extent it challenges the impugned judgment dated 30.05.2012 against the appellant to be jointly and severally liable to pay compensation in favour of the claimant is set aside. The matter arising out of the aforestated contention is remitted to the tribunal for proper adjudication.

7. Given the old pendency of the claim and the fact that the vehicle was not insured and since no amount has been released or realized till date, the tribunal is requested to conclude the short inquiry hereby remitted expeditiously, preferably within four months from the date of appearance hereby fixed.

8. For removal of doubts, it is clarified that this order shall not be construed as vacating the direction against the fifth respondent herein to pay the compensation awarded by the tribunal and the claimants are at liberty to take out appropriate execution petition to enforce the same.
9. The parties are directed to appear before the tribunal on 04th April, 2016 for further proceedings in accordance with law.
10. The appeal is disposed of in above terms.
11. Trial court record be returned with a copy of this judgment.

R.K. GAUBA
(JUDGE)

FEBRUARY 08, 2016/ssc