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

Date of Decision: 15th March, 2016

\+ **MAC APPEAL No.1048/2011**

NEW INDIA ASSURANCE CO. LTD. .... Appellant
Through: Mr. P. Acharya & Ms. Nitika Chaturvedi, Advs.

Versus

HARJEET KAUR & ORS. .... Respondents
Through: Mr. Bhupendra Singh & Mr. Prashant Sagar, Advs. for R-1 & 2.

AND

\+ **MAC APPEAL No.1049/2011**

NEW INDIA ASSURANCE CO. LTD. .... Appellant
Through: Mr. P. Acharya & Ms. Nitika Chaturvedi, Advs.

Versus

HARINDER KAUR & ORS. .... Respondents
Through: Mr. Bhupendra Singh & Mr. Prashant Sagar, Advs. for R-1 & 2.

AND

\+ **MAC APPEAL No.1067/2011**

NEW INDIA ASSURANCE CO. LTD. .... Appellant
Through: Mr. P. Acharya & Ms. Nitika Chaturvedi, Advs.

Versus

MASTER SURAJ KUMAR& ORS. .... Respondents

Through: Mr. Bhupendra Singh & Mr. Prashant Sagar, Advs. for R-1 & 2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. All these three appeals arise out of common judgment of motor accident claims tribunal (the tribunal) passed on 18.08.2011 whereby five claim petitions were decided, each of them having arisen out of the same motor vehicular accident that had occurred on 22.04.2004 at about 3.00 p.m. in the area of village Chanoli, PS Kurali, District Ropar, Punjab involving collision between Maruti Van bearing registration No. DL 3CT 5047 (the van) and truck bearing registration No. PAT 9291 (the truck). The van was being driven by Kamal Ram at the time of accident and was carrying a number of passengers including Sukhdev Singh, Baby Harpreet Kaur, Harjeet Kaur and Harinder Kaur all of whom suffered injuries. While Harjeet Kaur and Harinder Kaur survived. Kamal Ram, Sukhdev Singh and baby Harpreet Kaur died as a result. The appeals at hand relate to the claim cases that had been preferred for compensation on account of deaths of Sukhdev Singh, Harpreet Kaur and Kamal Rao.

2. In the claim cases preferred on 18.10.2004, the appellant insurance company (New India Assurance Co. Ltd.) was impleaded, it being the insurer of the truck against third party risk for the period in question, in addition to the driver and owner/insurer in respect of the truck. It appears the claimants had also impleaded the owner and insurer of the van as party respondents but

the tribunal concluded in (para 16 of) the impugned judgment that there was no fault on the part of the driver of the van and, thus, no liability could be fastened on the said respondents.

3. The tribunal, on the basis of the inquiry, concluded that the accident had occurred due to negligence on the part of the driver of the truck and, thus, held him to be the principal tortfeasor, holding its owner to be vicariously liable and called upon the insurance company to pay under the indemnity clause.

4. In the case arising out of the death of Sukhdev Singh, 20 year old bachelor, the claim petition presented by his parents (initially registered as claim case 906/2014, later as 20/2011), compensation in the sum of ₹ 4,00,000/- was awarded with interest. In the case relating to death of Baby Harpreet Kaur, two months old child, on the petition presented by her parents (initially registered as claim case 916/2004, later as 23/2011), the tribunal awarded ₹ 3,00,000/- as compensation with interest. In the case of claim arising out of death of Kamal Ram, the driver of the van, on petition presented by his widow, children and parents (initially registered as claim case 915/2004, later as 22/2011), the tribunal awarded compensation in the sum of ₹ 9,48,000/- with interest. These awards are challenged by MAC appeals No. 1048/2011, 1049/2011 and 1067/2011 respectively.

5. The basis contention urged in all these appeals is that the evidence on record showed that there was contributory negligence on the part of the van driver (Kamal Ram) and, therefore, the liability should have been apportioned equally. On perusal of the tribunal's record, this Court finds no substance in the contentions raised. The tribunal has discussed the evidence

in the impugned judgment at length. It noted that from the side of the claimants Harjeet Kaur (PW-1) and Harinder Kaur (PW-2) were examined. Both of them were also passengers in the van at the time of the accident. Both have deposed categorically that the van was being driven at normal speed and in compliance with the norms and regulations for the traffic movement. Both of them were clear in their deposition that the truck had come from the opposite direction and had struck against the van at a high speed. The tribunal did note in the course of the discussion that the site plan prepared by the investigating police indicated that the collision had occurred "almost" in the middle of the road. But it was also observed that the road at the place of question was quite wide and there was no other circumstance suggestive of maruti van having contributed to the cause leading to the accident. The expression "almost" in the middle of the road does not necessarily mean the van was in the middle of the road. On highway, the vehicles generally move at a high speed and in the process of overtaking, they are bound to come in the inner lane meant for traffic moving at faster speed. There is nothing on record to show that there were any speed limits in force in the area where the accident had occurred. Negligence cannot be attributed to the maruti van driver only because there was a head-on collision and only for the reason he was moving in the inner (fast) lane of the road.

6. In above facts and circumstances, this Court is not inclined to interfere in the finding of the fact recorded by the tribunal in the impugned judgment finding the fault wholly to be of the driver of the truck.

7. In the claim case relating to the death of Sukdev Singh (MAC appeal No. 1048/2011), the insurance company contends that the tribunal has over-

assessed the income of the deceased to calculate the loss of dependancy. It is noted that the evidence on record proved that the deceased Sukhdev Singh was earning his livelihood from an STD booth, which he was running from residence. The evidence proves that the five telephone numbers had been taken by him for running STD booth, the monthly bill of one of them reflecting call charges in the sum of ₹ 11,667/-, the average billing against remaining four being ₹ 2,500/- each. It was on the basis of such material that the tribunal calculated the earnings to be in the minimum of ₹ 5,000/- per month and, thus, calculated the loss of dependency to the extent of 50% of the said amount.

8. The contention of the insurance company that on the basis of above material, earnings could not have been assumed to such an extent is misplaced. The accident had occurred on 22.4.2004 when even the minimum wages payable to a matriculate was in the region of ₹ 3310.90. Having regard to the fact that the deceased was self-employed, it cannot be said that his income would be lower than what was fairly assessed by the tribunal.

9. In the claim case arising out of the death of Harpreet Kaur (MAC Appeal No. 1049/2011), the insurance company contends that the claim petition was initially filed under Section 163 A of Motor Vehicles Act, 1988 (MV Act) and that the tribunal, on its own, proceeded to treat it as a claim petition under Section 166 of MV Act. The impugned judgment gives sound reasons for such approach to be taken by the tribunal. Though captioned as an application under Section 163 A of MV Act, the claimants had clearly made out a case for compensation on principle of fault liability, alleging, *inter alia,* that the accident had occurred due to rash/negligent driving of the

truck. In these circumstances, the tribunal took an appropriate view by treating the said case as well as a case under Section 166 of MV Act.

10. In the claim case arising out of death of Kamal Ram (MAC Appeal No. 1067/2011), the solitary grievance of the insurance company is that the widow (Usha Devi) died on 18.11.2009 and this fact was withheld from the tribunal during inquiry. It is noted that the remaining claimants in the said case had moved an application on 29.08.2011 under Order 22 Rule 3 of the Code of Civil Procedure, 1908 (CPC) bringing the fact that the death of Usha Devi had occurred on 18.11.2009, to the notice of the tribunal and stating, *inter alia,* that she was survived by the remaining claimants. The tribunal accepted the request and by order dated 09.09.2011, allowed the application under Order 22 Rule 3 CPC and directed fresh apportionment of the compensation. In this view of the matter, the objection would not survive.

11. No other point was urged. The appeals are devoid of substance, and are liable to be dismissed.

12. By order dated 28.11.2011, in MAC Appeal Nos. 1048/2011 and 1049/2011, the insurance company had been directed to deposit the entire awarded compensation with interest with the Registrar General of this Court within the period specified whereupon the said amounts was directed to be kept in fixed deposit receipts initially for a period of three months to be renewed for one year from time to time. By identical order passed on 01.10.2013 in these three appeals, the entire deposited amounts directed to be released. It is submitted by counsel for the claimants that some amount on account of interest remains outstanding. If it is so, the claimants are at

liberty to take out appropriate execution proceedings before the tribunal to recover the balance, if any.

13. Statutory deposits, if made, shall be refunded.

14. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 15, 2016
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