

\$~R-113

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

Date of Decision: 30.05.2016

+ **MAC.APP. 19/2008**

NIDHI VARMA AND ANR

..... Appellant
Through Mr. Saurabh Tiwari, Adv.

versus

RAJESH KUMAR AND ORS

..... Respondent
Through Mr. Priyadarsi Acharya, Adv. for Mr.
Sameer Nandwani, Adv. for R-2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant) suffered injuries in motor vehicular accident that occurred on 25.09.2004 statedly involving use of car bearing No.DL 8CB 8646 (the offending vehicle), which is owned by the second appellant and was concededly driven by the first appellant on the relevant date, time and place. The offending vehicle was concededly insured against third party risk with the second respondent (insurer) for the period in question. The claimant instituted accident claim case (petition No.124/06) on 04.04.2005 initially invoking the provisions contained in Section 166 & 140 of Motor Vehicles Act, 1988 (MV Act), but subsequently converting it into a claim on the basis of structured formula under Section

163A of MV Act. Upon inquiry, by judgment dated 04.10.2007, the motor accident claimants tribunal (tribunal) upheld his case about injuries having been suffered due to accident caused on account of use of the offending vehicle at a public place. The tribunal assessed compensation in the sum of ₹1,34,225.32 and awarded with interest in his favour. It appears the insurance company, while contesting, had taken the plea that it was not liable since the offending vehicle had been fitted with CNG kit for which additional premium had not been paid. This plea of the insurance company was accepted and the liability to pay the compensation was fastened against the appellants jointly and severally.

2. Though the appeal was filed raising a number of contentions, at the hearing it is pressed only to question the finding about the offending vehicle having fitted with CNG kit and consequently the insurance company not being liable to pay compensation.

3. Having heard arguments and having gone through the record, this Court finds merit in the appeal to the above effect. The tribunal assumed that the offending vehicle was fitted with CNG kit illegally on the basis of suggestions given to the first appellant (RW1) and to the second appellant (RW2) during their respective cross-examination at the inquiry. It appears during the cross-examination of RW2 certain photographs were shown to him (owner of the vehicle). He was able to identify seven of such photographs as those of the offending vehicle but refused to confirm that the remaining three were of the car which he owned. The three remaining photographs which were not acknowledged by the second appellant (RW2) statedly show that the offending vehicle was fitted with CNG kit.

Noticeably, both RW1 and RW2, during their cross-examination, denied the suggestions that the vehicle was carrying a CNG kit. The tribunal on the basis of this material held that the conduct of RW2 was strange and consequently it had become “crystal clear” that the offending vehicle had been fitted with CNG kit illegally. This conclusion cannot be sustained as no evidence was led by the insurer to prove the allegation about CNG kit. Reference was made by the counsel for the insurer to certain documents (Ex.P14 and P15) which were proved by the claimant during his cross-examination as representations addressed by him to the Commissioner of Police and the Chief Minister of the Union Territory of Delhi respecting the misconduct on the part of the investigating police office. The said reliance is misplaced. The claimant during his testimony before the tribunal did not refer to any CNG kit fitted in the car. No suggestion to that effect was given even to him during his deposition. Thus, the finding about CNG kit is perverse and the same is set aside.

4. In result, the liability fastened on the appellants is vacated. It is held that the insurance company is liable to satisfy the award of compensation in favour of the claimant under the indemnity clause.

5. By order dated 14.01.2008, the appellants had been directed to deposit 50% of the awarded amount with the Registrar General within a period of four weeks whereupon the operation of the impugned order was stayed. By subsequent order dated 26.07.2011, the amount deposited by the appellants was allowed to be released to the claimant with observation that in case they were to succeed in the appeal, they would receive reimbursement from the insurance company.

6. Since the appeal is being allowed, the insurance company is directed to reimburse the amount paid by the appellants under the interim orders passed in this appeal and also satisfy the balance of the award in favour of the claimant by requisite deposit with the tribunal within 30 days.

7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 30, 2016
VLD

