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

Date of Decision: 21st March, 2016

\+ **MAC.APP. 12/2016**

SONAMATI & ORS ..... Appellants

Through: Mr. P. K.Chaudhary, Adv.

versus

THE ORIENTAL INSURANCE CO LTD & ORS..... Respondents

Through: Mr. S. K. Ray & Mr. Amitava Poddar, Advs. for R-1.

AND

\+ **MAC.APP. 485/2008 & CM APPL. 13329/2009**

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. S. K. Ray & Mr. Amitava Poddar, Adv.

versus

SONAMATI DEVI & ORS ..... Respondents

Through: Mr. P. K.Chaudhary, Adv. for R-1 to 6.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Chandrika Yadav died as a result of injuries suffered in a motor vehicular accident that occurred on 10.11.2000, as a result of injuries

suffered when the motor vehicle described as Tata-709 bearing registration no.DL-1LB-7887 wherein he was travelling as a helper/cleaner collided against a tree on road side. The truck was admittedly insured against third party risk with Oriental Insurance Co. Ltd. (appellant in MAC appeal no.485/2008). As per the claim petition before the motor accident claims tribunal (the tribunal) under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) submitted by his widow and other dependant family members on 26.05.2001, the accident had occurred since the vehicle was driven by Tribhuvan Prasad (eighth respondent in MAC appeal no.485/2008) in a rash/negligent manner. In the claim petition, besides the Oriental Insurance Co. Ltd. (the insurer) and Tribhuvan Prasad (the driver), Paramjit Singh Bhatti (seventh respondent in MAC appeal no.485/2008) was also impleaded, he being the registered owner/insured in respect of the vehicle.

2. During inquiry before the tribunal, the insurer took the plea that its liability was limited to the compensation that can be paid under the Workman's Compensation Act, 1923 (now known as Employees Compensation Act, 1923), in view of the first clause of proviso of Section 147(1) (b) of the MV Act. It also took the plea that there was a breach of terms and conditions of the insurance policy in that the driving license held by Tribhuvan Prasad was a fake document.

3. The tribunal held that the accident had occurred due to rash/negligent driving of the vehicle by Tribhuvan Prasad. It upheld the contention of the insurance policy with regard to the restriction on the compensation that could be paid and calculated the same in terms of the Section 4 of the

Employees Compensation Act, 1923 to the tune of ₹3,94,120/- and awarded it with interest at the rate of nine percent (9%) from the date of filing of the petition. The plea about the breach of terms and conditions of the policy, however, was rejected for the reason, the evidence led by the insurer through P. R. Bansal, Senior Assistant (R3W2) essentially based on record of the investigator was deficient and no proof had been adduced to affirm that the driving license was indeed a fake document.

4. By its appeal (MAC appeal no.485/2008), the insurer essentially reiterated that the driving license was fake and, thus, it should have been exonerated or at least granted recovery rights against the owner/insured. It may be mentioned here that on application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the insurer was allowed to examine two additional witnesses during the pendency of the appeal, they being Subrata Misra (AW1), a motor vehicle inspector of District Transport Authority/Office Tinsukhia, Assam and Bankim Das also as (AW1), inspector engaged by the insurer to prove his reports, particularly one obtained from District Transport Officer in Zunheboto Nagaland.

5. By their appeal (MAC appeal no.12/2016), based on cross-objections that were preferred on 30.05.2009, the claimants submitted grievance that it was not correct on the part of the tribunal to restrict the compensation to what is awardable under the Employees' Compensation Act, 1923. Their submission is that the compensation was claimed under Sections 166 of the MV Act and, therefore, the method of calculation of compensation adopted by the tribunal is erroneous.

6. Though, the learned counsel for the insurer initially pointed out that, in the cross-objections, the claimants had referred to Section 163-A of the MV Act as the basis of their initial claim, it was fairly conceded that in the petition filed before the tribunal, there was no such reliance on structured formula under Section 163-A and that the claim of the dependent family member of the deceased is founded on the fault liability principle.

7. There is substance in the grievance of the claimants. The restrictions under the first clause of proviso to Section 147(1) (b) of the MV Act are in respect of the limitation of liability of the insurer. The said limits action cannot operate against the claimants in so far as their case for compensation from the owner or the driver of the offending vehicle is concerned. The driver was impleaded as the principal tort-feasor. The claim against him was under Section 166 of the MV Act on the principle of fault liability. The limitation under Section 147 of the MV Act cannot come to his aid or to restrict his liability. The same would apply to the owner of the offending vehicle, who gets impleaded on account of vicarious liability.

8. The tribunal rejected the plea of the insurer with regard to the breach of terms and conditions of the insurance policy finding the evidence to be deficient. On account of liberty granted to the insurer in appeal, further evidence having a bearing on the said plea has come up. Since the issue of compensation awardable in the case is still at large the said part of the matter needs to be remitted to the tribunal - it will be just and proper that the tribunal is called upon also to take a fresh call on the prayer of the insurer for exoneration, or for grant of recovery rights, on the basis of additional evidence adduced before this court.

9. In above facts and circumstances, the impugned judgment is set aside. The questions of appropriate computation of compensation under Section 166 of the MV Act and the plea of the insurer seeking exoneration (or for recovery rights) on the basis of the evidence showing the driving license to be fake are remitted to the tribunal for further inquiry and fresh adjudication. Ordered accordingly.

10. Needless to add, while the compensation awardable against the driver and the owner of the offending vehicle is adjudged afresh by the tribunal under Section 166 MV Act, it shall bear in mind the plea of the insurer regarding limitation of its liability under Section 147(1) (b) of the MV Act in view of proven fact that the deceased was employed as a helper-cum-cleaner on the offending vehicle.

11. In order to facilitate the further inquiry, the Registrar General shall make over the additional evidence adduced before this court during hearing on the appeal to the tribunal which shall take the same into consideration without insisting on fresh evidence to be submitted.

12. The insurer had deposited the entire awarded amount with interest with the Registrar General of this court in terms of order dated 13.01.2009. The said amount deposited was transferred to the tribunal in terms of order dated 05.05.2009. The learned counsel for claimant submits that the said amount was later released by the tribunal to the claimants. The amount already paid by the insurer shall liable to be adjusted against the final award that is passed.

13. The parties are directed to appear before the tribunal for further proceedings on 22nd April, 2016.

14. The statutory deposit, if made, shall be refunded.

15. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 21, 2016
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