$~R-17&18 *(common order)*

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

Decided on: 5th July, 2017

\+ MAC.APP. 66/2009

THE NEW INDIA ASSURANCE CO. LTD...... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

SHIV PRATAP SINGH & ORS. ..... Respondents

Through: Mr. Navneet Goyal, Advocate for R-1.

Mr. L.K.Tyagi, Adv. for R-3.

\+ MAC.APP. 104/2009

SHIV PRATAP SINGH ..... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

JASBIR SINGH & ORS ..... Respondents

Through: Mr. L.K. Tyagi, Advocate for R-2.

Ms. Neerja Sachdeva, Adv. for R-4.

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

<u>JUDGMENT (ORAL)</u>

1. Shiv Pratap Singh, the appellant in MAC APP.104/2009 (hereinafter referred to as the claimant), had instituted an accident

claim case on 30.10.1995, seeking compensation invoking Sections 163-A and 166 of the Motor Vehicles Act, 1988, it having been registered as claim case No.746/1995 by the Motor Accident Claims Tribunal (Tribunal). It was stated in the said claim petition that on 22.05.1995 a motor vehicular accident took place at about 09:30 p.m. on Delhi Mathura Road near Chatta Sugar Mill, District Mathura involving two vehicles, they being Maruti van No.DL-4CB-1361 (the van hereinafter) and tanker bearing no.DL-1GA-0328 (tanker). While the claimant was concededly the driver of the van moving from Delhi towards Agra carrying certain other persons, the tanker was moving ahead of it. It was alleged that Jasbir Singh, shown in the array as the driver and owner of the tanker, had suddenly applied brakes, stopping his vehicle in the middle of the road without any prior caution. On account of such negligent driving, the van was involved in a collision resulting in injuries being suffered, amongst others, by the claimants. The petition was later amended so as to join United India Assurance Company Limited, the insurer of the tanker, as respondent no.2. The van which the claimant was driving was owned at the relevant point of time by Satpal Singh Chawla, he having been impleaded as third respondent before the Tribunal, it being insured against third party risk for the relevant period with M/s. New India Assurance Company Limited (appellant in MAC APP.66/2009).

2. The Tribunal held inquiry and, by its judgment dated 18.02.2006, declined to grant any compensation dismissing the petition holding, *inter alia,* that the claimant had not been able to

prove that he had sustained injuries on account of rash or negligent driving of the tanker.

3. The claimant came to this court by MAC APP.480/2006 which was allowed by judgment dated 9th July, 2008 holding the finding returned by the Tribunal to be perverse remanding the matter for a fresh decision particularly in view of the fact that the insurance company had come up with the plea of contributory negligence as one of the defences.

4. In the inquiry held after such remand, evidence was led. The inquiry eventually resulted in judgment dated 01.10.2008 whereby claim for compensation was upheld and on the basis of finding returned concerning the nature of injuries and the loss suffered, compensation in the sum of Rs.6,03,600/- was awarded. The Tribunal held that it was a case of composite liability on the part of both the vehicles (*i.e.* the van and the tanker) and, therefore, fastened the liability on the first and third respondents, mentioned above, in equal proportion holding, in turn, their respective insurers to indemnify directing compliance to be made within thirty days of such order.

5. The insurer of the van has come up in appeal (MAC APP.66/2009) pressing it on a very short point, *i.e.,* the claimant was not a third party in its relation and, therefore, it had no liability to discharge.

6. The claimant, on the other hand, has come up with his appeal (MAC APP.104/2009) seeking enhancement of compensation. Though

at one stage, the counsel for the claimant try to argue that the claim was wrongly treated as one brought under Section 163-A of the Motor Vehicles Act, 1988, the evidence having been led on the question of negligence as well, and that the Tribunal should have considered it to be a case for compensation under the Section 166 of the Act, after some arguments, the learned counsel for the claimant submitted, on instructions, that he may be allowed to withdraw the said appeal.

7. In view of the above submissions, the appeal of the claimant Shiv Pratap Singh (MAC APP.104/2009) is dismissed as withdrawn.

8. The counsel for the second respondent (M/s. United India Assurance Company Limited), it being the insurer of the tanker, submitted at the hearing that since the Tribunal has held it to be a case of composite liability, even if the insurer of the van (*i.e.,* appellant in MAC APP.66/2009) were not accountable, the case being not of a third party, the owner of the van, i.e., Sat Pal Singh Chawla (the third respondent) must bear his liability.

9. The learned counsel for the claimant fairly agreed that the claimant would not stand in the capacity of a third party in relation to the appellant insurer of the van since he being in use of the vehicle as the driver for and on behalf of the owner (the insured), his claim cannot stand against the insurer whose liability to indemnify is restricted to claims of third parties. He, however, submitted that since it is a case of composite liability, the insurer of the tanker may be called upon to pay the entire amount though it may be given recovery rights against the owner of the van.

10. It is clear from the record that Sat Pal Singh Chawla, the owner of the van did not file any appeal challenging the liability fastened against him. In the given facts and circumstances the appeal of the New India Assurance Company Limited (MAC APP.66/2009) deserves to be allowed. Ordered accordingly.

11. The liability fastened on the above said insurance company (insurer of the van) by the Tribunal is set aside.

12. The appellant in MAC APP.66/2009 M/s. New India Assurance Company Limited has already deposited 50% of the awarded amount with the Tribunal which was invested and upon which interest has been released to the claimant from time to time in terms of the earlier orders. The amount lying with the Tribunal shall now be released to the claimant forthwith. The appellant insurance company may take out appropriate proceedings to recover it from the owner of the van.

13. The statutory amount, if made, shall also be refunded to the appellant insurance company.

14. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

JULY 05, 2017
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