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

Date of decision: March 01, 2017

\+ MAC.APP. 4/2009

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Manoj R. Sinha, Advocate.

Versus

SMT. SUNILA GUPTA & ORS. ..... Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **ORAL**

1. In this Appeal, Appellant/Insurer seeks to wriggle out of the liability to pay the awarded compensation. Vide impugned Award of 27th September, 2008, compensation of ₹12 lacs with interest at the rate of 9% per annum has been awarded to respondent-claimant on account of death of Dr. C.B. Gupta in a road accident on 17th January, 1994. Vide subsequent order of 31st October, 2008, the arithmetical mistake in calculation of awarded amount stands corrected by learned Motor Accident Claims Tribunal *(hereinafter referred to as the 'Tribunal')* and the rectified compensation granted is ₹11,02,000/- with the same rate of interest.

2. The facts of this case are already noted in the impugned Award and so needs no reproduction, as challenge to the impugned award is not on

quantum of compensation granted but is on the liability aspect. Suffice to note the accident took place on 7th January, 1994 and driving license of driver who was driving the vehicle in question, had lapsed on 5th September, 1993 and it was got renewed after about four months of the accident i.e. on 19th January, 1994 i.e. two days after the accident in question. Learned Tribunal has relied upon Supreme Court decision in *Ishwar Chandra Vs. Oriental Insurance Company & ors.* 2007 ACJ 1067 to grant recovery rights to appellant against owner and driver of vehicle in question**.**

3. As per order of 21st April, 2010, service is complete. Respondent no. 4 and 5, who are the driver and owner of vehicle in question have been served by publication but none has appeared on their behalf. However, counsel for respondent-claimant had initially appeared. While entertaining this appeal, appellant was called upon to deposit the entire awarded amount. Vide order of 22nd July, 2009, it was directed that the entire deposited amount with interest be released to respondent-claimant. Contesting respondents No.4 and 5, who are the owner and driver of vehicle in question are unrepresented.

4. With assistance of learned counsel for appellant, impugned Award, evidence on record and the Three Judge Bench decision of Supreme Court in *Malla Prakasrao Vs. Malla Janaki & ors.* (2004) 3 SCC 343 has been perused. The precise submission advanced by learned counsel for appellant is that in view of Supreme Court's decision of Three Judge Bench in *Malla Prakasrao (supra)* holding that where the driving license was not valid, there is no liability of the Insurer to pay the awarded

compensation. It is submitted that learned Tribunal has erred to rely upon the decision of Two Judge Bench and earlier decision of Three Judge Bench would prevail and so, appellant deserves to be absolved from the liability to pay the awarded compensation.

5. Supreme Court in Three Judge Bench decision in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21 has already reiterated the settled legal position on the liability aspect which is as under:-

> *" While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."*

6. Pertinently, Supreme Court in a later Three Judge Bench decision in *Malla Prakasrao (supra)*, has not considered its earlier Three Judge Bench decision in *Sohan Lal (supra)*. In case of conflict between two decisions by Bench of same strength, Supreme Court in *Union of India Vs. S.K. Kapoor* (2011) 4 SCC 589 has authoritatively reiterated that decision of earlier Bench of the same strength would prevail. The dictum of Supreme Court in *S.K. Kapoor (S*upra) is that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength.

7. As already noted above, later Three Judge Bench decision of Supreme Court in *Malla Prakasrao (supra)* has not considered the earlier Three Judge Bench decision in *Sohan lal (supra),*so earlier decision of *Sohan Lal (supra)* shall prevail. Applying the dictum of Three Judge Bench in *Sohan lal (supra)* to the facts of the instant case, it is held that appellant-Insurer cannot be absolved of its liability to pay the awarded compensation *(which has been purportedly paid)* and learned Tribunal has rightly granted recovery rights to appellant.

8. In view of the aforesaid, finding no substance in this, it is dismissed. Statutory deposit, if any, be refunded to appellant as per rules.

(SUNIL GAUR)
JUDGE

MARCH 01, 2017
ac