$~45 to 47 *(common order)*

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

Decided on: 20th July, 2017

\+ MAC.APP. 45/2014 and CM APPL. 956/2014
\+ MAC.APP. 47/2014 and CM APPL. 962/2014
\+ MAC.APP. 48/2014 and CM APPL. 964/2014

IFFCO TOKIO GENERAL INSURANCE CO LTD
..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SH SOHANPAL & ANR ..... Respondents
Through: Ms. Amandeep Kaur, Advocate with Ms. Vriti Jindal, Advocate

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

JUDGMENT (ORAL)

1. On the night of 02-03.09.2006 Dhanesh Jindal, the registered owner of car bearing registration no.HR-51M-8304 (the car) was moving with his wife Ruchi and two children, namely, Ayush aged four and a half years and Kritika aged one year in the direction of Hotel Delite, Faridabad, Haryana. The car had to be stopped on roadside due to heavy rains, when it had reached near at Sun Flag Road, Faridabad, Haryana. It appears the air conditioning system of the car was functional, all the occupants of the car waiting inside for the rains to come to a stop. It is during this period of wait that carbon

monoxide gas got generated and entered the chamber of the car which resulted in all the said four persons being suffocated to death. The matter came to light when passersby noticed the dead bodies lying in the car stationary on roadside on the morning of 03.09.2006. The police was called in. The investigation that followed confirms the above to be the sequence of events.

2. The car was insured against third party risk for the period in question with the appellant insurance company. The first and second respondent, they being the parents of deceased Dhanesh Jindal and consequently father-in-law of deceased Ruchi, and grandparents to the two children who also died, instituted three accident claim cases (MACT No.855-857/2007) on 26.09.2007 seeking compensation under the structured formula on principle of no-fault liability in terms of Section 163-A of the Motor Vehicles Act, 1988 (the Act).

3. The appellant insurance company was the only party representing the other side. The insurer contested the petitions which were put to inquiry and resulted in separate but identical judgments of the Motor Accident Claims Tribunal (the tribunal) dated 09.06.2010. The contention about use of the car resulting in deaths in the manner stated above was accepted. The tribunal, however, was of the view that the claimants could not claim compensation since they were not dependents on the deceased persons.

4. The above-said decisions were challenged before this court by MAC APP.622-623/2010 and MAC APP. 658/2010. The appeals were decided by common judgment dated 13.10.2011 whereby the

matters were remanded back to the tribunal to determine the compensation that could be awarded on the basis of evidence already led, thereby reversing the view taken by the tribunal as to the dependency.

5. The tribunal, after remand, by common judgment dated 22.10.2013, has awarded compensation in each case in favour of the claimants, rejecting the contentions of the insurance company that a case under Section 163-A of the Act could not be maintained in the above noted factual matrix.

6. The provision contained in Section 163-A of the Motor Vehicles Act, 1988 reads thus:-

> ***"163A. Special provisions as to payment of compensation on structured formula basis.—***
>
> *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
>
> *Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).*
>
> *(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the*

> *claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*
>
> *(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."*

7. The insurance company, by these appeals, reiterates its arguments that in the absence of any proof of the car having been involved in collision, it could not be said that there was an accident within the meaning of the provision contained in Section 163-A of the Motor Vehicles Act, 1988 and, therefore, the claim could not have been allowed under that provision of law. It also submits that its liability under the insurance contract is to indemnify the person insured and since no one on that side was shown in the array, it cannot be called upon to indemnify.

8. The second submission, as noted above, needs to be mentioned only to be rejected outright. It has to be borne in main that Dhanesh Jindal, the registered owner of the car, who was the person insured also perished in the same accident. Therefore, it is practically impossible for the claimants to implead any living person as a respondent so as to represent the person insured. Even otherwise, as has been pointed out, Section 163-A of the Act is a special provision and conceives of liability there-under being fastened either against the owner of the motor vehicle or against the authorized insurer and not necessarily both of them put together.

9. In *National Insurance Company Limited vs. Nidhi Arora & Ors.,* MAC APP.674/2010, decided on 5th April, 2016, this court had observed thus:-

> *"19. Noticeably, sub-section (1) of 163-A envisages the liability to pay such compensation under this provision to be that of the "owner of the motor vehicle or the authorized insurer". Plainly read and understood, the clause leaves no room for doubt that the liability to pay compensation may be fastened against the owner of the motor vehicle which was in "use" at the time of the accident or against its insurer, and not necessarily on each of them. Of course, in the event the motor vehicle is insured, having regard to the provisions laid down in Chapter XI of the Act, the prime liability to pay would eventually shift onto the insurer. But, there is nothing in the language employed to conclude that the liability has to be 'joint and several' of both (owner and insurer). The special provision was brought in with the avowed objective of simplifying the procedure. The use of disjunctive clause, in the opinion of this Court, amply indicates that the presence of the owner as a party respondent is not intended to be sine qua non for liability to be placed at the door of the insurer. To put it differently, a claim under Section 163-A can be maintained either against the owner of the motor vehicle or against the insurer, or against both of them, jointly and severally, there being no obligation to implead each of them in case the vehicle is subject to an insurance policy. The choice and prerogative to proceed against a particular party (owner or insurer) is essentially that of the claimant."*

10. The other contention also is found to be lacking merit. It is clear from the bare provision of Section 163-A quoted earlier that the claimants invoking such jurisdiction need not even plead or establish any wrongful act or negligence or default on the part of the owner or any person connected to the motor vehicle. All that needs to be

proved so as to be successful in seeking compensation under this special jurisdiction is to show death (or permanent disablement) to have occurred due to "accident" arising out of "use" of the motor vehicle.

11. The expression "accident" does not necessarily mean or connote, as is generally assumed, a collision between two motor vehicles or even a sequence of events wherein a motor vehicle collides against anything, be it a human being, or an object, or a property or whatever. The expression *"accident"*, as per the dictionary meaning, reads as under:-

> *"Oxford dictionary – An event that is without apparent cause or unexpected; an unfortunate event, especially one causing injury or damage.*
>
> *Cambridge dictionary – www.dictionary.cambridge.org. – something bad that happens that is not expected or intended and that after damages something or injures someone.*
>
> *Merriam – Webster – www.merriam-webster.com – an unforeseen and unplanned event or circumstance."*

12. The expression *"use"*, as appearing in Section 163-A of the Motor Vehicles Act, 1988 came up for consideration before the Supreme Court in *Shivaji Dayanu Patil & Anr. vs. Vatschala Uttam More, (1991) 3 SCC 530.* In para 26 of the said judgment, the court observed thus:-

> *"**26.** These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider*

sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the abovementioned decisions, the appellate bench of the High Court has held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. <u>In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident</u>. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."

(emphasis supplied)

13. In above view, the contentions of the insurance company in appeals are devoid of substance.

14. The insurance company is directed to now satisfy the awards in each case by requisite deposit with the tribunal within thirty days.

15. The statutory amount, if deposited, shall also be refunded to the appellant in each case.

16. The Appeals are disposed of in above terms.

R.K.GAUBA, J.

JULY 20, 2017
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