$~R-159 & 160

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

Decided on: 06th September, 2017

\+ MAC.APP. 38/2010 & CM 1515/2010 (for additional evidence)

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Kanwal Chaudhary, Advocate

versus

DEVENDER PRASAD & ORS ..... Respondents
Through: None

\+ MAC.APP.219/2010 & CM 6410/2010(for additional evidence)

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Kanwal Chaudhary, Advocate

versus

DEVENDER PRASAD & ORS ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. On 06.03.2007, Devender Prasad (first respondent in both these appeals) was moving in a car bearing registration no.DL-3CA-5454 (car), his wife Ratna Prasad travelling with him. The car came to be involved in a collision with a motor vehicle described as Tata 207 bearing registration no.DL-1LE-9881 (the offending vehicle) at about 11.45 a.m.. As a result of the collision both Devender Prasad and Ratna Prasad suffered injuries, the latter dying in the consequence. Two accident claim cases, one, on account of death of Ratna Prasad (MACT 63/2008) and, the other, for the injuries suffered by Devender

Prasad (MACT no.64/2008) were instituted on 17.05.2007 on the averments that the accident had occurred due to the negligent driving of the offending vehicle.

2. The Motor Accident Claims Tribunal (Tribunal) clubbed two cases and, by a common judgment dated 11.11.2009, upheld the claim for compensation on the principle of fault liability. The compensation in each case was determined and the liability was fastened on the appellant / insurance company (insurer), it admittedly having issued an insurance policy covering third party risk in respect of the offending vehicle for the period in question. Concededly, no evidence was led by the insurance company before the Tribunal to bring home any case of breach of the terms and conditions of the insurance policy.

3. By the appeals at hand, the insurance company seeks to agitate the claim for recovery rights on the ground the driver of the offending vehicle Sabbir Mohd., respondent in both these appeals, was not holding a valid or effective driving licence on the relevant date and further that the vehicle was not covered by a valid permit, the permit earlier taken out having expired on 05.11.2004. The insurance company while raising these issues concedes that the driver did hold a valid driving licence for light motor vehicles (LMV)-non transport, its plea being that the offending vehicle was a light goods vehicle.

4. Alongwith the appeals, applications have been moved (CM Nos.1515/2010 & 6410/2010) seeking opportunity to move additional evidence invoking order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the contention being that the evidence to above effect

was collected by the investigating officer who had made a report on 03.12.2009.

5. The claim petitions were instituted on 17.05.2007. They remained pending inquiry before the tribunal with the insurance company participating leading to the impugned judgment being passed on 11.11.2009. There was opportunity available to the insurer to bring home its case including on the basis of statutory defences, if any. No efforts were made at that stage to adduce any evidence. The opportunity under Order 41 Rule 27 CPC cannot be claimed as of right or for the asking. There is no explanation as to why the investigation could not be made in time. Even otherwise, the contention raised on the facts concerning driving licence noted above is misplaced in view of the rulings of this court in *National Insurance Co. Ltd. vs. Shama & Ors. MAC Appeal no. 490/2008 decided on 19th July, 2017; New India Assurance Co. Ltd. vs. Subhash Rastogi & Ors. MAC Appeal No. 438/2009 decided on 25th July, 2017 and Ram Narain Verma vs. Rajani & Ors. (Reliance General Ins. Co. Ltd.) MAC Appeal No. 478/2017 decided on 27th July, 2017.*

6. The appeals are dismissed. The pending applications also stand dismissed.

7. The statutory amounts shall be refunded after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

SEPTEMBER 06, 2017

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