$~R-627 & 628

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

Decided on: 04th December, 2017

\+ MAC APPEAL 1117/2012 and CM 17951/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

PROMILA PRABHAKAR & ORS. ..... Respondents

Through: None

\+ MAC APPEAL 184/2013

PROMILA PRABHAKAR ..... Appellant

Through: None

versus

GULBIR SINGH & ORS. ..... Respondents

Through: Mr. Pankaj Seth, Adv. for R-3/insurance company

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

JUDGMENT (ORAL)

1. Vikas Prabhakar, a bachelor, stated to be 26 years old, died due to the injuries suffered by him in a motor vehicular accident that occurred on 11.10.1997, statedly due to negligent driving of a bus bearing registration no.DL-1P-3703 by the fourth respondent (driver). His parents, first and second respondents, instituted accident claim

case (MACT 13/99/11) on 29.07.1999 impleading the siblings of the deceased, they being fifth and sixth respondents (all collectively the claimants) seeking compensation. In the said case, the registered owner of the bus (seventh respondent) was impleaded in addition to Gulbir Singh (third respondent), he being the person who is stated to have purchased the said vehicle from the registered owner, this in addition to the appellant (insurer) with reference to the insurance policy issued by it in respect of the said offending vehicle for the period in question at the instance of the seventh respondent (registered owner).

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 23.07.2012, accepted the case that death had occurred due to negligent driving of the bus. It awarded compensation in the total sum of Rs.4,12,700/-, the liability being placed on the insurer, its plea for exoneration having been rejected.

3. The insurer came up with the appeal (MACA 1117/2012) submitting that the ownership of the bus having been transferred by the seventh respondent in favour of the third respondent, there being no privity of contract between the appellant and the said third respondent, the liability could not have been fastened upon it.

4. On the other hand, the claimants by their appeal (MACA 184/2013) have submitted grievance that the award is deficient, the prime contention urged in this regard is that the income earned by the deceased in United Kingdom should have been the benchmark and not the minimum wages payable in India, he being a person who was resident of London (U.K.) where he was earning his livelihood.

5. Both appeals were put in the list of 'Regulars' as per order dated 24.02.2016. When they are taken up for hearing in their own turn, there is no appearance on behalf of the claimants. The learned counsel for the insurer has been heard and with his assistance record perused.

6. It appears that the claimants had relied on certain documents to show the income of the deceased. But then, the same were tendered in evidence through the testimony of Mr. S.K. Prabhakar (PW-1), one of the claimants, there being no effort made to bring in any other witness to formally prove the said material which would have a bearing on the nature of avocation of the deceased or the earnings accruing therefrom. Keeping in view the facts and circumstances of the case, it appears just and proper that the claimant be given one more opportunity to prove their contentions on the subject of loss of dependency.

7. The manner in which the learned tribunal has handled the issue of there being no privity of contract between the insurer on one hand and the person, to whom the registered owner had sold the vehicle on the other, during the period of contract of insurance taken out at the instance of the registered owner leaves much to be desired. The core issue as to who was the person in control at the relevant point of time has not been addressed. [see *judgment dated 14.09.2017 in MACA 524/2008, Sidharth Khetrapal Vs. Mohd. Hanif & Ors*.]. The tribunal has vaguely held that both the registered owner and the person to whom the vehicle had been transferred, by sale, are jointly and severally liable and on that account also held the insurer of the

registered owner liable to indemnify. This is not a proper approach to the matter.

8. Consequently, the impugned judgment is set aside. The claim case is remitted to the tribunal for fresh adjudication. The parties are directed to appear before the tribunal on 05.02.2018.

9. By order dated 16.10.2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch and from out of such deposit, eighty percent (80%) of such amount was directed to be released to the claimants. The balance lying in deposit shall be presently refunded along with statutory deposit to the insurance company. The amount already received by the claimants shall be liable to be adjusted against the award as determined by the tribunal by its fresh adjudication.

10. Both the appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 04 , 2017
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