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

Decided on: 13th July, 2017

+ **MAC APPEAL 246/2008**

SUBHASH CHAND & ORS. Appellants

Through: Ms. Suman Bagga & Mr.
Pankaj Gupta, Advs.

versus

RATTAN SINGH & ANR. Respondents

Through: Mr. Pankaj Seth, Adv. for R-2.

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

JUDGMENT (ORAL)

1. This unfortunate case which relates to cause of action that had arisen three decades ago i.e. on 26.04.1987, has come up for hearing and adjudication by this Court now with the first claimant Phoolwati having already died and her then minor children having since come of age and settled in their respective lives, they being the appellants herein. The claim relates to motor vehicular accident involving half body truck bearing no. DHG 1995 which was carrying more than 40 passengers for attending *Satsang* within the area of police station Mehrauli, New Delhi. The truck turned turtle midway the journey, and no one was called in these proceedings to describe the reasons for such mishap. Out of the several persons who were travelling in the truck,

now conceded by the appellants to be gratuitous passengers, Tara Chand, the husband of the first claimant Phoolwati and the father of the appellants herein died due to the injuries suffered. The claim case (old petition no. 479/1987, later registered as suit no. 1000/2004), instituted on 29.10.1987, sought to invoke the jurisdiction of the motor accident claims tribunal under sections 166 and 140 of Motor Vehicles 1988. It was contested by the second respondent (concededly the insurer of the truck), the other respondent Rattan Singh (owner-cum-driver of the vehicle) having suffered the proceedings *ex-parte*. The insurance company took the plea that it was not liable since the deceased was travelling as a gratuitous passenger in a vehicle not meant for such purpose.

2. The owner-cum driver before he suffered the proceedings *ex-parte* had filed written statement denying involvement or negligence. The tribunal put the matter to inquiry by framing issues. Since the claim was based on the principle of no fault liability, it called upon the claimants to lead evidence on that score. The first appellant herein, Subhash Chand, one of the claimants, appeared as the only witness on the strength of his affidavit as PW-1, he concededly not an eye-witness. Reliance was also placed on the copy of first information report (FIR) no. 137/1987, it having been proved as Ex.PW-2/1, this in addition to the proof of death due to the injuries in the said accident by production of the post mortem examination report (Ex.PW-5/1).

3. The tribunal, by judgment dated 01.12.2007, dismissed the claim case holding that there was no evidence brought on record to

prove that the accident had occurred due to negligent driving of the truck.

4. The appeal was filed in April, 2008 and has remained pending mostly on account of neglect on the part of the appellants. The tribunal's record would also show that the claim case was not diligently pursued or prosecuted by the claimants at that stage resulting in inordinate delay in adjudication.

5. At the hearing, it is now conceded by the counsel for the appellants that they are unable to produce any witness, or evidence, to prove that the accident had occurred due to negligence on the part of the driver of the truck. The FIR (Ex.PW-2/1) which has already come on record, however, clearly shows the use and involvement of the truck in the accident. In this view, the counsel for the appellants submitted that award at least on the principle of no-fault liability should have been granted in the case.

6. At the stage of consideration of the appeal, on an earlier date, it had been submitted by the appellants that the Court may consider converting the claim from one under Section 166 of Motor Vehicles Act, 1988 to one based on structured formula under Section 163-A of Motor Vehicles Act, 1988. At the hearing, however, counsel for the appellants fairly conceded that this would not be permissible as the provision contained in Section 163-A was inserted by the amendment which came into effect from 14.11.1994 and cannot be applied retrospectively to the cause of action relating to 26.04.1987. In fact, when the accident took place, the Motor Vehicles Act, 1988 itself was not operative.

7. Faced with the above fact-situation, it has been submitted on behalf of the appellants that the claim on principle of fault under Section 166 is not pressed and may be dismissed accordingly but these proceedings may be closed by grant of statutory compensation on principle of no-fault liability under Section 92-A of Motor Vehicles Act, 1939.

8. Section 92-A of Motor Vehicles Act, 1939 was inserted by amendment with effect from 31st August, 1982. The provision reads as under:-

“92A (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under subsection (1) in respect of death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made or

shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.”

9. The owner-cum driver of the truck, inspite of notice, has failed to appear to contest these proceedings in appeal. The counsel for the appellants fairly conceded that statutorily fixed compensation on principle of no-fault liability under Section 92-A of Motor Vehicles Act, 1939 deserves to be granted as only is now pressed. He, however, submitted that the plea of the insurance company about the deceased being a gratuitous passenger should also be accepted and, in this view, there having been a breach of terms and conditions of the insurance policy, it should be granted recovery rights against the owner of the offending vehicle (insured).

10. The above-noted contention of the insurer must be accepted. After all, a truck is not a motor vehicle meant for transporting human beings in the manner it was done at the time of the accident. More than forty passengers were moving in the truck for attending *Satsang*, which, in a vehicle of this nature, was impermissible. Therefore, there was a breach of terms and conditions of the insurance policy. Though the insurer is being burdened with the liability to initially pay, such arrangement on account of the fact that it is a benevolent legislation, it should have recovery rights against the insured.

11. The amount prescribed in Section 92-A Motor Vehicles Act, 1939 is meager. But, in the facts and circumstances noted above,

claim being now restricted only to that extent, the appeal is allowed with direction to pay no-fault liability compensation to the claimants.

12. It is noted that the tribunal had noted in order dated 29.03.2001 that the interim award had to be passed. But, due to technical defects (non-impleadment at that stage of legal representatives of the deceased claimant) as noted in proceedings recorded on 06.03.2002, such consideration was deferred. Thereafter, all sides forgot to enforce the statutory command in such respect.

13. Therefore, it is directed that the insurer shall pay the amount of Rs. 15,000/- with interest @ 9% from the date of filing of the claim petition till realization to the claimants (appellants), it being equally divided amongst them. The payment in terms of above directions shall be made by requisite deposits with the tribunal within 30 days of today. After such deposits, the insurance company may take out appropriate proceedings before the tribunal for recovery of the corresponding amount from the registered owner (first respondent herein).

14. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 13, 2017

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