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

Decided on: 16th November, 2017

\+ MAC.APP. 296/2013 and CM 38160/2017

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. L.K. Tyagi, Advocate

versus

REENA KUMARI & ORS. ..... Respondents
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

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

JUDGMENT (ORAL)

1. The accident claim case (suit no.433/2009) instituted on 02.05.2005 by the first to third respondents (collectively, the claimants) sought compensation under Section 163-A of the Motor Vehicles Act, 1988, on account of the death of Sanjay Kumar @ Sanju Kumar on 04.03.2005 at a place just ahead of Toll Plaza near Badarpur Border. Sanjay Kumar @ Sanju Kumar was the driver of truck bearing registration no.HR-38G-4745 which was owned by the fourth respondent (since deceased) who had engaged him for such purposes as an employee. The truck was admittedly insured against third party risk with the appellant (insurer) for the period in question. It is an admitted case of the claimants that the death had occurred on account of Sanjay Kumar @ Sanju Kumar being stabbed by certain

miscreants who had waylaid him with the truck at the place of the incident, this forming subject matter of investigation by first information report (FIR) no.167/2005 under Sections 392, 397, 302 read with Section 34 of Indian Penal Code, 1860 (IPC) of police station Badarpur, Delhi.

2. The contention of the claimants before the tribunal was that the death having been caused as a result of culpable homicide of Sanjay Kumar @ Sanju Kumar, at a time when he was driving the truck, amounted to an accident that had occurred during the course of use of the truck and, therefore, the invocation of Section 163-A of the Motor Vehicles Act, 1988 was appropriate.

3. The insurance company while resisting the case not only contended that the claim could not fall within the four corners of the jurisdiction of the Motor Accident Claims Tribunal (Tribunal), there being no nexus, as per its submission, between the death and the accident as is a pre-requisite under Section 163-A, it also contended that the deceased was not a third party in such respect and, therefore, it could not be called upon to indemnify the owner.

4. In the given fact situation, though the tribunal has rejected the objection on the first above noted aspect, *inter alia*, with reference to the ruling in *Reeta Devi & Ors. Vs. New India Assurance Company Ltd. and Anr., II (2000) ACC 291 (SC),* the impugned judgment is conspicuously silent on the question of "third party".

5. After some hearing, the learned counsel for the claimants submitted that in view of the omission on the part of the tribunal to render a clear decision on above aspect, the impugned judgment may

be set aside, but his request was that the matter may be remitted to the tribunal for appropriate and complete adjudication. Ordered accordingly.

6. The claim case is thus remanded to the tribunal for fresh adjudication by the tribunal including on the question of the defence of the insurance company that it cannot be held liable for the reason that the deceased was not a third party in its respect. Since the insurance company had also come up with other contentions having a bearing on the quantum of compensation, all such pleas are reserved and may be re-agitated before the tribunal. The parties are directed to appear before the tribunal on 19.12.2017.

7. By order dated 05.04.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date accrued interest with the Registrar General who was directed to retain the said amount in fixed deposit. The amount thus deposited with accrued interest and the statutory amount shall presently be refunded to the insurance company.

8. This disposes of the appeal and the application filed therewith.

R.K.GAUBA, J.

NOVEMBER 16, 2017
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