$~R-193 to 197

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

Decided on: 13th September, 2017

\+ MAC APPEAL No. 236/2010

NATIONAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

GANESH CHANDER JHA & ORS. ..... Respondents
Through: None.

\+ MAC APPEAL No. 237/2010

NATIONAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

RADHA DEVI & ORS. ..... Respondents
Through: None.

\+ MAC APPEAL No. 239/2010

NATIONAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

HARI KRISHAN JHA & ORS. ..... Respondents
Through: None.

+ MAC APPEAL No. 241/2010

NATIONAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

RAJJO DEVI & ORS. ..... Respondents
Through: None.

+ MAC APPEAL No. 245/2010

NATIONAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

MANJULA JHA & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. These five appeals arise out of common judgment dated 24.11.2009 of the motor accident claims tribunal whereby the claim petitions of the first respondents in MAC Appeal No. 236/2010, 237/2010, 239/2010, 241/2010 and of the first to sixth respondents in MAC Appeal No. 245/2010 were decided, awards of compensation having been granted for the injuries suffered by the said four persons and the last on account of death of Vishnu Kumar Jha in motor

vehicular accident that had occurred on 24.04.2004 involving an unidentified truck on one hand and Maruti Omni car bearing registration no. HR 51 H 1057 (the car) on the other. The car, as per the pleadings and evidence adduced, was driven by Het Ram (a respondent in these appeals), it being registered in the name of Krishan Singh, owner (another respondent in these appeals) at whose instance it was insured against third party risk with the appellant insurance company (insurer), also in the fray of respondents in all the claim cases before the tribunal.

2. As per the case of the claimants in the five petitions seeking compensation, all the four injured persons and Vishnu Kant Jha (the deceased), being members of the same family were on their way from Badarpur to Haridwar having taken "on hire" the van. They alleged that the driver of the van was negligent in driving and it was on this account that it came to be involved in a collision against the truck moving ahead. It may be added here that the claim petition on account of death of Vishnu Kant Jha, however, was pressed only under Section 163 A, Motor Vehicles Act, 1988, the claims on account of injuries to the four persons being on the principle of fault liability under Section 166, Motor Vehicles Act, 1988.

3. The insurance company while putting in contest by its written statements raised preliminary objection that its liability would arise subject to proper compliance with the provisions of the Motor Vehicles Act, 1988 having been shown.

4. During the inquiry, the record of the tribunal reveals, insurance company sought opportunity and was allowed to lead evidence. It examined its assistant, Dharmender Arya (R3W1) through whom the insurance policy (Ex.R3W1/1) and the copies of the registration certificate (ExR3W1/2) were proved in addition to notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC), as per copy (Ex.R3W1/3), sent to the registered owner by post (per receipts Ex.R3W1/4 to 6), to which there was no response. R3W1 testified that since the vehicle had been taken on hire, there had been a commercial use of the vehicles in breach of terms and conditions of the insurance inasmuch as the vehicle was registered and insured meant for use as a private vehicle only.

5. The tribunal while granting the compensation in each of the five cases wrongly assumed that the insurance company had been taken in defence. The impugned judgment is conspicuously silent with regard to the evidence adduced by the insurance company during the inquiry. There is neither a reference to the defence raised nor any discussion of the evidence adduced nor any finding returned.

6. These appeals are pressed by the insurance company only to seek recovery rights. At the hearing, the learned counsel for the insurance company submitted it will be fair that the matters are remanded to the tribunal for complete adjudication, though such remand may be restricted only for the adjudication of the recovery rights without disturbing the compensation awarded and already paid to the claimants in five cases.

7. Inspite of notice and having even appeared earlier neither the driver nor the owner of the vehicle have appeared at the final hearing. In view of the above deficiency in the impugned judgment, the appeals are allowed. While not disturbing the determination of compensation and directions respecting its payment to the respective claimants by the impugned judgment, the matter restricted to the claim of the insurance company for recovery rights is remanded to the tribunal for proper adjudication. For such purposes, the tribunal shall take up the proceedings on 24th October, 2017 when the parties shall be duty bound to appear. In all fairness, before proceeding further, the tribunal shall issue fresh notices to the owner and driver of the vehicle in question.

8. The statutory amount shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 13, 2017
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