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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th January, 2015

+ **MAC.APP. 456/2011**

RELIANCE GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pankaj Seth, Advocate

versus

MEENA & ORS.

..... Respondents

Through: Mr. Amit Kumar Pandey,
Advocate for Respondents no.1
to 3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

ORDER

G. P. MITTAL, J. (ORAL)

1. It is reported by the learned counsel for Respondents that Respondent no.3 Priya had died after passing of the award. She was the unmarried daughter of Prem Chand *i.e.* sister of deceased Amar, a bachelor. There is no other legal heir of Respondent no.3. Her LRs are already on record. Her name is ordered to be deleted from the array of parties.
2. The Appellant Insurance Company impugns judgment dated 07.04.2011 passed by the Motor Accident Claims Tribunal (the

Claims Tribunal) on the ground of negligence as well as the quantum of compensation.

3. While dealing with the issue of negligence, the Claims Tribunal held as under:

“7. As the present petition is instituted under Section 166 MV Act, as mandated by the rigours of the above provisions, the petitioner was under obligation to discharge its burden to show the factum of negligence attributable to the driver, R-3 while plying the offending vehicle. In the petition initially in Para 23, the relevant circumstances explaining the reason of the accident have been detailed. Subsequent thereto, the petitioner in her examination affidavit reiterated the facts alleged in the petition. At the cost of repetition, it be observed that there has been no cross-examination of the petitioner by any of the respondents. R-2 and R-3 despite being ex-parte, could have proceeded to cross-examine the petitioner on the date she was examined. However, no opportunity was availed. Similarly, the insurance company, R-1 also despite contesting the proceedings, did not opt to cross-examine the petitioner which opportunity was subsequently closed. In such circumstances, the submissions made by the petitioner remained unrebutted and uncontroverted. Besides the above, it be observed that the driver was the best witness who could have detailed and disclosed the circumstances leading to causation of the accident. The driver has not opted to either contradict the version of the petitioner and/or to lead his own evidence, thereby the best evidence has been withheld by the driver and an adverse presumption against him is to be drawn. Furthermore, as the present proceedings have been instituted on AIR, the IO has also placed on record all the relevant documents including the FIR, the vehicle inspection report, site plan and the proposed charge-sheet under Section 173 Cr.PC. All the above documents clearly reflect the investigation inditing the driver for his negligence resulting in the accident, being caused. In such circumstances, sufficient material has been placed on record to establish the factum of negligence on the part of driver, R-3.

8. Even otherwise, it is pertinent to observe that the degree of proof required for proving the negligence on the part of the

driver in the present proceedings, is not as vigorous as is required in proving the guilt of the accused in criminal trial. The intent of the present legislation is benevolent and the entire purpose of the legislation is likely to be defeated if in each case the petitioner is asked to prove beyond reasonable doubt the involvement and negligence on the part of the driver. In reaching to the above opinion, I am guided by the judgment of Khushnuma Begum and others Versus New India Assurance Limited, 2001 ACJ 421 SC as well as the case reported as National Insurance Company Limited Versus Pushpa Rana, 2009 ACJ 289, wherein it is held that mere involvement of a vehicle is sufficient to establish and hold the claim petition to be maintainable. It is held that even the certified copy of charge-sheet may not be asked for if the petitioner is able to satisfy on record the involvement of the offending vehicle through the copy of FIR and the mechanical inspection report. The issue hence, is decided in favour of the petitioner and against the respondents.”

4. It may be noted that as per the case set up before the Claims Tribunal, there was an eye witness to the incident. He was not examined. The police had simply placed on record a photocopy of the FIR and a photocopy of the site plan which too is illegible. The Respondents(claimants) ought to have discharged the initial onus of proving negligence at least on the touchstone of preponderance of probabilities. The finding on the issue of negligence cannot be sustained. The same is hence, set aside. The appeal is kept pending.
5. Trial Court record is ordered to be remitted to the Trial Court with the direction to record the testimony of the alleged eye witness as sought by the police or any other evidence which may be produced by the Respondents(claimants) and remit the

same to this Court within 12 weeks.

6. The parties are directed to appear before the Claims Tribunal on 18.02.2015.
7. Trial Court Record be returned through Special Messenger.
8. List the appeal for hearing on 16.07.2015.
9. Copy of the order be given *Dasti* to the learned counsel for the parties.

(G.P. MITTAL)
JUDGE

JANUARY 20, 2015
pst