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

Decided on: 04th September, 2017

\+ MAC.APP. 749/2016

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Amit Gaur for Mr. Pradeep Gaur, Advocate

versus

UMA DEVI DUBEY & ORS ..... Respondents

Through: Mr. Ashok Mahajan and Mr. Deepak T., Advocates for R-1

Mr. D.K. Singh, Mr. Gaurav Singh, Mr. Pankaj Chauhan, Ms. Savita Singh, Ms. Shanti Ranjan, Advocates for R-3

\+ MAC.APP. 222/2017

UMA DEVI DUBEY ..... Appellant

Through: Mr. Ashok Mahajan and Mr. Deepak T., Advocates for cross-objector

versus

MANOJ KUMAR & ORS ..... Respondents

Through: Mr. D.K. Singh, Mr. Gaurav Singh, Mr. Pankaj Chauhan, Ms. Savita Singh, Ms. Shanti Ranjan, Advocates for R-2

Mr. Amit Gaur for Mr. Pradeep Gaur, Advocate for R-3/NIC

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

JUDGMENT (ORAL)

1. On 15.05.2010, a Tavera car bearing registration no.DL-4C-AD-6598 (car) was being driven by Manoj Kumar, a respondent in these appeals from Katra (Jammu & Kashmir) to Delhi via Jalandhar (Punjab) carrying as passengers Sunil Babu Sharma, his wife Manisha Sharma, relatives Gulab Devi and Uma Devi Dubey besides others. At about 02.00 hours on the night intervening 18th and 19th May, 2010 in the area of District Kapurthala, Punjab, the car driver indulged in rash driving and in the process lost control over it, the vehicle hitting against a truck which was moving ahead. The collision that took place resulted in the above mentioned four persons suffering injuries, Sunil Babu Sharma, Manisha Sharma and Gulab Devi dying in the consequence. The incident eventually became subject matter of investigation by police through first information report no.76/2010 under Sections 279 / 304A / 427 of Indian Penal Code, 1860 registered by police station Sadar, Phagwara, Punjab.

2. Four accident claim cases were instituted, one (MACT 348/2010) by the members of the family dependent on Gulab Devi as claimants, they being the first to third respondents in MACA 741/2016; second, (MACT 349/2010) by members of the family dependent on Manisha Sharma, they being the first and second respondents in MACA 740/2016; third (MACT no.350/2010) by the members of the family dependent on Sunil Babu Sharma, they being the first to third respondents in MACA 743/2016, the appellants in cross appeal (MACA 219/2017); and yet another (MACT 13/2011) for and on behalf of the injured Uma Devi Dubey.

3. The Motor Accident Claims Tribunal (Tribunal) clubbed all the four cases and held inquiry, deciding them by a common judgment dated 07.06.2016 upholding the case of the claimants that accident had occurred due to negligent driving of the car by the said respondent / Manoj Kumar, holding him and Mukesh Narula (owner of Tavera car), also a respondent in these appeals, jointly and severally liable to pay the compensation consequently awarded. The car was admittedly insured against third party risk with National Insurance Company Ltd. (insurer) which was also impleaded in the claim petitions and, thus, was called upon to indemnify the owner and pay the compensation.

4. It may be added here that one of the contentions raised by the insurer during the inquiry was that the car, registered and insured as a vehicle meant for private use had been given on hire for the journey in question. This, per the submissions of the insurer, being in breach of the terms and conditions of the insurance policy, it sought recovery rights, the said defence, however, having been repelled.

5. The insurance company is in appeal (MACA 749/2016) reiterating its plea for grant of recovery rights. This plea was also pressed by the insurance company in the context of claim cases arising out of death of Sunil Babu Sharma, Manisha Sharma and Gulab Devi and became the subject matter of MACA 743/2016, 219/2017, 740/2016 and 741/2016 which have been decided by a separate judgment of even date. The plea of the insurance company in that regard has been rejected by this court by the observations which are extracted as under :-

"17. The question of breach of the terms and conditions of the insurance policy has been considered in the impugned judgment and the plea of the insurer rejected by the tribunal for the reasons set out as under :-

> *"...Ld. Counsel for insurance co. has argued that offending vehicle was used by respondent no.2 for commercial purpose and was given on hiring basis to the occupants of the car for going to pilgrimage to Vaishno Devi at Jammu Kashmir. In this connection, he has relied upon the statement made by the driver to IO after the accident in which driver has stated that vehicle was booked by the owner of the vehicle for going to Vaishno Devi. As discussed in issue no.1, evidentiary value of statement made by driver to IO after accident cannot be more than the evidentiary value of statement made by witness before the tribunal on oath. Statement of driver was not on oath nor the same has been put to petitioner as well as respondent no.2 for cross-examination. Witness examined by the tribunal has clearly stated that there was friendly relationship between respondent no.2 and deceased Sunil Babu Sharma and that Sunil Babu Sharma has taken vehicle from respondent no.2 for going to Vaishno Devi. Witness has clearly denied the suggestion that the vehicle has been hired on payment basis. There is nothing on record to suggest that respondent no.2 was running any business of Tour and Travels or had given vehicle to deceased Sunil Babu Sharma for going to Vaishno Devi on payment of certain amount. Even the amount which the respondent no.2 was supposed to be charging has not been stated by driver to the IO. In fact in the statement made by respondent no.1 to the IO he has only stated that the vehicle was booked for going to Vaishno Devi. He has not stated that vehicle was booked on payment or on any monetary consideration for going to Vaishno Devi. Mere*

> *usage of the word "Booked" does not mean that same was booked against any pecuniary consideration. Nothing has come on record to suggest that the vehicle was taken by the deceased Sunil Babu Sharma from its owner for going to Vaishno Devi on payment of any monetary consideration. As no violation of the terms and conditions of the policy are proved on record, hence, I am of the opinion that respondent no.3 being insurance company is liable to pay the compensation on behalf of respondent no.1 and 2…"*
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> *18. In the considered view of this court, the tribunal has correctly appreciated the facts. There was actually no evidence brought before the tribunal from which it could be inferred that the car had been allowed to be used for commercial purposes. The plea of the insurance company having been rightly rejected, there is no ground made out for the said finding to be disturbed."*

6. The above finding shall also govern the claim case for compensation on account of the injuries suffered by Uma Devi Dubey. In view of the above finding on the issue of recovery rights, the appeal of the insurance company (MACA 749/2016) is dismissed.

7. While the insurance company by its appeal (MACA 749/2016) has only raised the issue of recovery rights, the claimant by her appeal (cross appeal MACA 222/2017) has prayed for enhancement of the compensation.

8. The claimant is dissatisfied with the compensation awarded to her on the ground that her evidence showing that she had to leave the job as a teacher in a private school on account of the after-effect of the injuries suffered, has not been properly appreciated. It is also her

grievance that having suffered the injuries in the accident which had occurred in the state of Punjab, she was initially treated in a hospital at Jalandhar and from there she was constrained to move for further treatment initially to Delhi and thereafter to Agra in the State of Uttar Pradesh, she being a permanent resident there. It is her submission that the injuries suffered included serious fractures in the Zygomatic arch which has resulted in permanent disability, on which the evidence adduced was not properly construed. It is also her submission that though there was an advice for further surgical procedure, on account of the lack of requisite financial resources, she was unable to pursue the said suggested course of treatment and this has affected the quality of life, which she is forced to bear and undergo. It is also her grievance that the entire expenditure incurred during the treatment or expected to be incurred for the surgical intervention that has been suggested, has not been covered by the compensation awarded.

9. Against the above backdrop, the counsel for the claimant submitted that the impugned judgment may be set aside and the matter be remitted to the tribunal for further inquiry. The counsel for the insurance company, on being asked, submitted that he leaves the request to the discretion of the court.

10. In the given facts and circumstances, having regard to the nature of injuries suffered and the prolonged treatment that the claimant has already undergone as indeed the advice for surgical procedure which was suggested to her, but she could not undertake, the request of the claimant is found to be just and proper. Thus, the impugned judgment in so far as it calculated the compensation payable and to be borne by

the insurance company is set aside. The matter is remitted to the tribunal for further inquiry. During such further inquiry, the claimant will be entitled to lead additional evidence. As requested on behalf of the claimant, the tribunal shall also arrange for she to be examined by a board of doctors to evaluate her claim of permanent disability, and if so, its extent. Needless to add, the contesting parties shall be given right to lead evidence in rebuttal, if any. The tribunal after affording such opportunity shall pass a fresh judgment determining the compensation payable to the claimant Uma Devi Dubey.

11. By order dated 09.09.2016 on MACA 749/2016, the insurance company had been directed to deposit the awarded amount with the tribunal as a pre-condition to the stay of the operation of the award. By subsequent order dated 20.03.2017, 50% of the said amount was allowed to be released. The balance shall be presently refunded to the insurance company. The amount already received by the claimant shall be liable to be adjusted against the award that is determined by the tribunal in the judgment to be passed in terms of the above directions.

12. The statutory amount paid by the insurance company shall be refunded.

13. The parties shall appear before the tribunal for further proceedings on 12.10.2017.

14. Both appeals are disposed of in above terms

R.K.GAUBA, J.

SEPTEMBER 04, 2017
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