$~357 & 358

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

Decided on: 25th October, 2017

\+ MAC APPEAL 558/2011

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Manoj Ranjan Sinha, Advocate

versus

SANJAY KUMAR VIRMANI & ORS. ..... Respondents
Through: None

\+ MAC APPEAL 579/2011

SANJAY KUMAR VIRMANI & ANR ..... Appellant
Through: None

versus

GANGA SINGH & ORS. ..... Respondents
Through: Mr. Manoj Ranjan Sinha, Advocate for R-3

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

JUDGMENT (ORAL)

1. On 04.02.2008, Ravinder Singh @ Raman, a bachelor, aged 37 years, suffered injuries in a motor vehicular accident involving negligent driving of a bus bearing registration no.DL-1PB-4909 admittedly insured against third party risk for the period in question

with National Insurance Co. Ltd. (appellant in MACA 558/2011), and died in the consequence. Two of his brothers, they being appellants in MACA 579/2011 on their behalf and on behalf of their sisters, they being Anju and Pooja @ Rekha, respondents in these appeals (collectively, the claimants), instituted accident claim case (case no.590/2008) on 16.04.2008 impleading, amongst others, appellant / insurance company besides the driver and owner of the said offending vehicle.

2. On the basis of the evidence led during inquiry, the Motor Accident Claims Tribunal (Tribunal), by its judgment dated 23.03.2011, accepted the claim and awarded Rs.1,59,539/- as compensation directing the insurer to pay with interest at the rate of 7.5% p.a., the said amount inclusive of Rs.25,000/- each towards funeral charges and on account of loss of love and affection besides Rs.1,09,539/- as dependency loss.

3. The insurance company on which the liability to pay the compensation has been fastened, by its appeal MACA 558/2011, reiterates the plea taken before the tribunal to the effect that the driving licence on which Ganga Singh, the driver, relied on was a fake document and, therefore, it should have been exonerated or at least granted recovery rights.

4. On the other hand, the claimants by their appeal (MACA 579/2011) seek enhancement of compensation on the ground the same has not been properly computed. Both these appeals, after completion of service, were put in the list of regulars in terms of the directions given earlier. When they are taken up for hearing, there is no

appearance on behalf of the claimants. It is noted that in the appeal of the insurance company, Ganga Singh (third respondent) and Naresh Kumar (fourth respondent / owner) had already been duly served and had even appeared. At the hearing, however, even that set of parties has chosen not to appear to assist.

5. The submissions of the counsel for the insurer have been heard and with his assistance the record perused.

6. The contention of the claimants in their appeal about the inadequacy of the award is found to be correct. The tribunal took note of the fact that the claim is for and on behalf of the siblings. In this view, it should have considered appropriate award under the head of loss to estate by treating one-third of the earnings as the amount on which the calculations had to be made. Instead of such normal rule being followed, the tribunal deducted 85% of the income of the deceased notionally assessed as his personal and living expenses. The loss to estate is, thus, recomputed as [Rs.4057/3 x 12 x 15] Rs.2,43,420 rounded off to Rs.2,44,000/- (Two Lakh and forty four thousand only).

7. Having regard to the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, amount of Rs.1,00,000/- towards loss of love and affection, besides Rs.25,000/- towards funeral expenses as awarded are added.

8. Thus, the total compensation in the case comes to [Rs.2,44,000/- + Rs.1,00,000/- + Rs.25,000/-] Rs.3,69,000/- (Rupees

Three Lakh and sixty nine thousand only). The award is modified accordingly.

9. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

10. The sisters of the deceased had relinquished their claim in the compensation in favour of the appellants in MACA 579/2011. The tribunal had apportioned the award accordingly. The said apportionment shall remain undisturbed.

11. The insurance company had raised the issue of fake driving licence and had submitted a report to such effect vide Ex. R3W1/3 proved by Dev Raj Arya (R3W1). The said report was, in turn, based on the report of the Transport authority, Guwahati which purported to be the office from where the document in question had been issued. The Tribunal, however, was not impressed with the said evidence and found deficiency in the efforts on the part of the insurance company for the reason it had failed to obtain a report strictly in terms of Rule 5(b) of the Delhi Motor Accident Claims Tribunal's Rules 2008.

12. In the considered view of this court, the approach of the tribunal was erroneous. The form prescribed under the aforesaid rules is one of the methods on which the insurance company could have proved its contention about absence of valid or effective driving licence. The Tribunal failed to take note of further evidence to the effect that the insurance company had issued a notice under Order XII Rule 8 of the

Code of Civil Procedure, 1908 (CPC) dated 01.12.2010 (Ex. R3W1/4) addressed both to the driver and owner (third and fourth respondents in MACA 558/2011), the same having been sent by post (vide postal receipt Ex. R3W1/5, R3W1/7 and R3W1/8) calling them upon to produce the relevant documents. The record of the tribunal clearly shows that there was no response by the said respondents to the said notice. The natural inference is that there was no valid or effective driving licence that could be shown to exist.

13. In these circumstances, the plea of the insurance company that there has been a breach of the terms and conditions of the insurance policy deserves to be accepted. Since the case involves third party rights, the proper approach would be to grant recovery rights to the insurance company. Ordered accordingly.

14. The appeal of the insurance company was entertained on the limited issue of recovery rights. Therefore, it would be liable to satisfy the award, as modified above, by making requisite deposit with the tribunal within 30 days in favour of the claimants and thereafter it shall have the opportunity to take out appropriate proceedings before the tribunal to enforce recovery rights which are hereby granted.

15. The statutory deposit shall be refunded to the insurance company.

16. Both appeals and the pending application are disposed of in above terms.

Dasti.

R.K.GAUBA, J.

OCTOBER 25, 2017/yg