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

Decided on: 19th July, 2017

+ **MAC APPEAL No. 374/2008**

ASHA RANI & ORS. Appellants

Through: **Mr. R.K. Kohli, Adv.**

versus

NATIONAL INSURANCE CO. LTD. & ANR Respondents

Through: **Mr. Pradeep Gaur, Adv. for R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Vinod Kumar, the husband of the first appellant, he being the son of the second appellant and the father of the other appellants, suffered burn injuries on 14.09.2005 and died in the consequence. This appears to have become subject matter of inquiry into the cause of death vide daily diary entry no. 11A dated 14.09.2005, followed by DD entry no. 6A dated 16.09.2005, both logged in police station Timarpur.

2. The appellants instituted accident claim case (suit no. 488/2006) on 22.02.2006, impleading the respondents as the parties on the other side, claiming compensation in terms of Section 163-A of Motor Vehicles Act, 1988, *inter alia*, alleging that the injuries had been

suffered because petrol had suddenly overflowed out of the carburettor of motorcycle bearing registration no. DL 1SP 2122 (the motorcycle) and had caught fire at a time when the deceased was in the process of cleaning it. The plea raised was that it was an accident on account of use of a motorcycle within the meaning of the provision contained in Section 163-A of Motor Vehicles Act, 1988. The second respondent was impleaded in these proceedings on the plea that it was the registered owner of the motorcycle, the first respondent herein being statedly the insurer for the relevant period.

3. The insurer, upon being served with the notice, came with an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the claim petition. The tribunal, upon consideration of the said application, decided to examine the maintainability of the claim petition in the light of two questions namely as to whether the accident had occurred at a public place and, second, as to whether it had arisen out of “use” of the motor vehicle. On examining the documents on record, particularly copies of the proceedings of police in the context of inquiry into the cause of death, the tribunal answered both the questions against the appellants, and therefore, dismissed the claim petition at the threshold.

4. Having heard the learned counsel on both sides and having gone through the tribunal’s record, this Court is of the opinion that the provision contained in Order 7 Rule 11 CPC could not have been invoked or applied in the facts and circumstances of the case in the manner done. For considering as to whether the petition is to be rejected, it is the averments in the petition which only had to be seen.

In the said averments, the claim was that petrol had suddenly come out of the carburettor and had caught fire engulfing the vehicle and the deceased resulting in the mishap. The tribunal has instead gone by certain documents which are on record, particularly yet unauthenticated copy of document purporting to have been written by one of the sons of the deceased seeking waiver of the post-mortem examination on the ground that the incident had occurred per chance. It does appear that, in the said request for waiver of the post-mortem examination, the incident is described differently. But then, the claimants were entitled to prove facts as had been pleaded in the petition. Such opportunity was never made available as the petition was rejected rather than being put to inquiry.

5. For the foregoing reasons, the impugned order is set aside. The claim petition is restored on the file of the tribunal which shall proceed further in accordance with law and take a fresh decision. Needless to add, for proceeding further, the tribunal shall call upon the respondents to first file their written statements in answer to the claim petition. It is such pleadings which shall result in the inquiry and fresh adjudication which, of course, must be based on evidence, for which opportunity will have to be given to all sides.

6. The parties shall appear before the tribunal on 17th August, 2017.

7. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 19, 2017/nk