

\$~R-375 & 376

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

Decided on: 27th October, 2017

+ MAC APPEAL No. 684/2011

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. A.K. Soni, Adv.

versus

SUDHAKAR GUPTA & ORS. Respondents
Through: None.

+ MAC APPEAL No. 686/2011

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. A.K. Soni, Adv.

versus

MONIKA GUPTA & ORS. Respondents
Through: None.

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

JUDGMENT (ORAL)

1. On inquiry into the two accident claim cases (suit nos. 646/10 and 646A/2010), both instituted on 29.03.2006, the motor accident claims Tribunal by a common judgment dated 18.04.2011 held that a motor vehicular accident had occurred on 06.10.2005 involving collision between two motor vehicles, one being Kinetic scooter

bearing registration no. MH 31 AZ 8873 (the scooter) and, the other, Tata Eicher Canter bearing registration no. HR 38L 8759 (the Eicher Canter). The scooter was driven at the relevant point of time by Monika Gupta (first respondent in MAC Appeal No. 686/2011) and she was carrying along her mother Snehlata on the pillion. As a result of the collision which took place in the area of Andrews Ganj, New Delhi, both suffered injuries, Snehlata dying in the consequence.

2. While one of the aforesaid cases (suit no. 646A/2010) was filed by the said Monika Gupta, the other (suit no. 646/2010) had been submitted by the husband and other members of the family dependent on deceased Snehlata, seeking compensation on account of her death. The tribunal held on the basis of evidence that the accident had occurred due to negligent driving of Eicher Canter by its driver Ram Kishan (a respondent in these appeals). The Eicher Canter was admittedly owned by and registered in the name of Jaipal Singh (another respondent in these appeals, he (registered owner) having been impleaded as a party respondent to the claim petitions.

3. It may be added here itself that Ram Kishan, the driver of Eicher Canter, is reported to have subsequently died.

4. During the course of the contest, the appellant (insurer) which had concededly issued an insurance policy against third party risk in respect of the Eicher Canter had taken a plea that there was breach of terms and conditions of the said insurance contract for the reason the vehicle was not covered by a valid permit. The evidence in this regard was adduced. The registered owner Jaipal Singh (fifth respondent in

MAC Appeal No. 684/2011 and second respondent in MAC Appeal No. 686/2011) also appeared as a witness in his own defence (RW1). The tribunal noted the deposition of Jaipal Singh (RW1) explaining that the vehicle was on the move in the area in question for 'puja' (of the vehicle) in Kalkaji Temple and also for some repair work, it having been purchased 10-15 days prior to the accident, he admitting that there was no valid permit taken in its respect on the date in question. The tribunal accepted this explanation and on that basis rejected the plea of the insurance company for exoneration.

5. Jaipal Singh (the registered owner of the offending vehicle) has been duly served in these proceedings and had even appeared earlier through counsel. He has not filed any reply to the appeals. When the appeals are taken up there is no appearance on his behalf. The matter has been considered with the assistance of the counsel for the appellant.

6. In the considered view of this Court, the approach of the Tribunal to the issue raised by the insurance company cannot be approved of. Since the vehicle was registered in the State of Haryana, it had no reason to enter the Union Territory of Delhi without a valid permit. In these circumstances, the explanation offered cannot be accepted. There has clearly been a breach of terms and conditions of the insurance policy.

7. Consequently, the appeals are allowed, the insurance company is granted recovery rights against Jaipal Singh (the registered owner of the offending vehicle).

8. The insurance company had been directed by order dated 27th July, 2011 and 29th July, 2011, in these appeals to deposit the entire awarded amount with upto date interest with the Registrar General as a pre-condition to the stay against execution, such amounts to be put in fixed deposit receipts for a period of three months with provision for periodic renewal. By subsequent order dated 19.12.2011 in MAC Appeal no. 684/2011 the entire amount was released to the claimants. In the other case (MAC Appeal No. 686/2011) no such order has been granted.

9. The amount lying in deposit is, thus, directed to be released to the claimant.

10. The statutory amounts shall be refunded.

OCTOBER 27, 2017

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R.K.GAUBA, J.

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