$~8, 9 & 11 *(common order)*

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

Decided on: 16th August, 2017

\+ MAC.APP. 55/2017 and CM APPL.1873/2017 & 1875/2017

SHRIRAM GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

BALAI DASS & ORS ..... Respondents

Through: Mr. Nikhil Tripathi proxy counsel for Mr. Amit Kumar Pandey, Advocate for R-1.
Md. Azam Anzari, Adv. for R-3.
Mr. J.K. Sharma, Adv. for R-4.

\+ MAC.APP. 65/2017 and CM APPL.1910/2017 & 1912/2017

SHRIRAM GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

BALAI DASS & ORS ..... Respondent

Through: Mr. Nikhil Tripathi proxy counsel for Mr. Amit Kumar Pandey, Adv. for R-1 to R-3.
Md. Azam Anzari, Adv. for R-5.
Mr. J.K. Sharma, Adv. for R-6.

\+ MAC.APP. 295/2017 and CM APPL.11412/2017 & CM APPL. 11414/2017

SHRIRAM GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

MOHD ISHTIYAK AHMED & ORS ..... Respondents

Through: Mr. Nikhil Tripathi proxy counsel for Mr. Amit Kumar Pandey, Advocate for R-1.
Md. Azam Anzari, Adv. for R-3.
Mr. J.K. Sharma, Adv. for R-4.

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

JUDGMENT (ORAL)

1. The motor vehicular accident that occurred on 21.10.2011 at about 8.00 p.m. involved negligent driving of motor vehicle bearing registration No.DL-2W-1054 referred to in the registration certificate as *"Gramin Sewa"*, it resulting in injuries being suffered by several persons including Konika Dass, Balai Dass and Mohd. Ishtiyak Ahmed, first mentioned person (Konika Dass) having died in the consequence, this giving rise to cause of action for accident claim cases (Suit Nos. 689-691/2014) being brought before the Motor Accident Claims Tribunal (the tribunal) which decided them, after inquiry, by common judgment dated 02.07.2016.

2. As per the pleadings and evidence led before the tribunal, the said *Gramin Sewa* was driven at the relevant point of time by Firoz Ahmed (driver), it being registered in the name of Gopal Krishan (registered owner) and insured against third party risk with the appellant insurance company (insurer) for the relevant period. It was brought out during inquiry, on the basis of pleadings and evidence to that effect, that the vehicle *Gramin Sewa* had been taken over from the registered owner by Charu Kapoor (the person in possession) on lease for a period of three years from the registered owner and after the accident it was released on *superdari* to her through her father Joginder Kapoor, a move duly supported by the registered owner.

3. The tribunal having held that the accident had occurred due to negligent driving of the said *Gramin Sewa*, awarded compensation in each case, fastening the liability on the insurer, rejecting its defences seeking exoneration on the grounds that the driver did not hold a valid or effective driving licence for the vehicle in question and also for the reason the vehicle had been transferred by the registered owner (insured) in favour of the person in possession.

4. By the appeals at hand, the insurer reiterates the above defences. Having heard the learned counsel and having gone through the record, this court finds no substance in the appeals.

5. The evidence did show that the driver held a valid and effective driving licence for a Light Motor Vehicle (LMV). Though the driving licence was meant for Non-Transport Vehicle (NTV), the vehicle in question being one used for transport purposes, the tribunal has

correctly invoked the decision in *National Insurance Company vs. Swaran Singh* (2004) 3 SCC 297, to reject the plea, the rule of main purpose and the concept of fundamental breach being attracted.

6. The other plea cannot be accepted for the simple reason that the tribunal has also held the registered owner jointly and severally liable to pay the compensation alongside the person in possession. The liability of the insurer is to indemnify the said registered owner.

7. Thus, the appeals with accompanying applications are dismissed.

8. The stay against enforcement of the award is vacated. The insurance company had earlier deposited the awarded amount with interest in terms of the interim orders. The same shall now be released to the respective claimants.

9. The statutory amount shall be refunded to the appellant insurance company.

R.K.GAUBA, J.

AUGUST 16, 2017
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