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

Decided on: 20th July, 2017

+ **MAC.APP. 619/2014 and CM 11138/2014**

**BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD**

..... Appellant

Through: Mr. Apoorv Chandra Saxena, Adv.

versus

SMT. NIRMALA DEVI & ORS

..... Respondents

Through: Mr. S.N. Parashar and Mr.J.S.

Dagar, Advocates for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The motor vehicular accident, which is the cause of action for the impugned judgment of the Motor Accident Claims Tribunal (Tribunal), assailed in the present appeal, was subject matter of investigation by police through FIR no.714/2007 of police station Najafgarh registered on 05.08.2007. From the FIR, it is revealed that there were possibly two vehicles involved, one being motor cycle bearing no.DL-9SL-6329 (hereinafter, the first motor cycle) and, the other, motor cycle bearing no.DL-4NB 5357 (hereinafter, the second motor cycle). The claim of the first and second respondents (MACP 187/09) was for compensation on account of death of their son Rakesh

Kumar, he being described in the petition as the driver of the first motor cycle.

2. The petitioners claimed compensation on structured formula on the principle of no fault liability under Section 163A of the Motor Vehicles Act, 1988 in which context the question of negligence would be irrelevant. They claimed that the accident had occurred involving the second motor cycle, it having been collided against the first motor cycle. In the evidence, it is indicated that one more person had died in the same collision, she being described as a girl named Medha. As per the evidence, the other deceased Medha was riding on the pillion of the first motor cycle of which deceased Rakesh Kumar was the driver.

3. The parents of Medha had also filed similar accident claim (MACT 896/08/07) which was decided by a separate judgment dated 11.01.2010 by another Tribunal. In the said claim case titled *Durgawati and Ors. Vs. Rajinder Singh and Anr.*, the second claimant in the present case (father of the deceased Rakesh Kumar) was impleaded as the first respondent, he being the registered owner of the first motor cycle, it being insured against third party risk with National Insurance Co. Ltd. (second respondent of said other case). As per the copy of the judgment dated 11.01.2010, Medha was described to be a pillion rider on the second motor cycle. This would be in contrast to the claim made in the present petition.

4. The claim on account of death of Rakesh Kumar was contested by the appellant insurance company, it being the insurer of the second motor cycle, on the ground that there was no collision between the two vehicles, the first motor cycle having collided against central verge

and an electricity pole. Reference in this regard is made to the conclusion reached by the police upon investigation, as per the report under Section 173 Cr. PC filed. The insurance company seeks reference to copies of statements under Section 161 Cr. PC of two persons, they being Rakesh Kumar and Piyush, copies whereof have been submitted. Rakesh Kumar and Piyush are described here as the persons travelling on the second motor cycle, former being the driver and the latter being the pillion rider. The said statements are the basis of the above noted conclusion by the police in the report under Section 173 Cr. PC.

5. The Tribunal rejected the defence raised by the insurance company and upheld the claim based on the plea of involvement of the second motor cycle in the accident leading to the death, awarding compensation under Section 163A of the Motor Vehicles Act.

6. The insurance company assails the judgment of the Tribunal seeking reference to the copy of the report under Section 173 Cr. PC and to the statements of the above-mentioned persons under Section 161 Cr. PC.

7. The basic flaw in the submission of the insurance company is that statements under Section 161 Cr. PC cannot be treated as substantive evidence. When the claim petition, from which the present proceedings arise in appeal, was being inquired into, the claimants had examined Umed Singh (PW-2), a retired Sqn. Leader, who deposed on the strength of his affidavit (Ex. PW2/A), describing the sequence of events confirming the collision between the two motor cycles. It does appear that the name of Umed Singh (PW-2) does not

figure in the police record. But then, there cannot be a thumb rule that a person whose name is not mentioned in the police investigation could not have been an eye witness. If Rakesh Kumar and Piyush, the riders of the other motor cycle, had given a narration about the sequence different from the one on which the present case was based, in their respective statements to the police, they being the persons who were obviously present at the scene since the motor cycle on which they were riding was also found in damaged condition at the scene, they would have been available to the insurance company as witnesses to contradict the case of the claimants. The insurance company, despite opportunity, chose not to have them summoned to discredit of version of PW-2. In this view, the contentions urged on the basis of unsubstantiated record of the police, or with reference to the pleadings in the other claim case, cannot be accepted.

8. The appeal is devoid of substance and is dismissed. The pending application also stands disposed of.

9. The insurance company shall now satisfy the award by requisite deposit with the Tribunal within 30 days.

10. The statutory amount shall be refunded after proof of the award having been satisfied.

R.K.GAUBA, J.

JULY 20, 2017

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