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

Decided on: 13th July, 2017

\+ MAC APPEAL No.269/2017 & CM Nos. 10587-88/2017

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SAHIRA & ORS. ..... Respondents
Through: Mr. S.K. Kashyap, Adv. for R-1 & 2.
Mr. Vageesh Sharma, Adv. for R-3 & 4.
Mr. Neeraj Sharma, Adv. for R-5.

\+ MAC APPEAL No.289/2017 & CM Nos. 11343-44/2017

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SAHIRA & ORS. ..... Respondents
Through: Mr. S.K. Kashyap, Adv. for R-1 & 2.
Mr. Vageesh Sharma, Adv. for R-3 & 4.

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

JUDGMENT (ORAL)

1. Raheesh and Babar Khan, sons of first and second respondents in these appeals (hereinafter referred to as the claimants) were moving on motorcycle bearing registration no. DL 4SNA 2230 (hereinafter referred to as the motorcycle), the former driving and the latter on the pillion on 12.12.2011, and when they had reached main traffic light of Sectors 12 and 22 of Noida at about 9.45 p.m., bus registration No. DL 1PA 5698 (hereinafter referred to as the bus) came and collided against them resulting in both suffering injuries, consequent whereupon both died. Raheesh was married while Babar Khan was a bachelor. The claimants instituted claim cases (MAC Nos. 42 and 43/2013) for compensation in each case. In the former, Farha Rani, wife of Raheesh was impleaded as fifth respondent. The bus on account of rash driving of which the accident statedly occurred was owned by Raj Kumar (fourth respondent in these appeals) and it was driven at relevant point of time by Ravi Kumar (third respondent in these appeals), it being insured against third party risk with New India Assurance Company Ltd. (the appellant). The driver, owner and the insurer were impleaded as respondents in the claim proceedings.

2. The tribunal clubbed the two cases and held inquiry and, by common judgment dated 04.01.2017, accepted the cases of deaths having occurred due to negligent driving of the bus. Compensation in the sum of Rs. 8,35,208/- was awarded in the case of death of Raheesh and compensation in the sum of Rs. 5,36,452/- was awarded in the case of death of Babar Khan. In each case, interest @ 12% per annum was added. The insurance company was directed to satisfy the award

in terms of its statutory/contractual liability. Apportionment including in favour of widow, Raheesh Khan, was made.

3. The insurance company by these appeals submits that the evidence on the question of negligence was deficient. Its other contention is that the driving license of Ravi Kumar (third respondent), though valid for the period in question, had been got issued on the basis of a document purporting to be a driving license for an earlier period, which upon verification, has been found to be fake. It is on the basis of verification report subsequently received on 14.02.2017 to this effect that opportunity is sought to lead evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the insurance company is also aggrieved with the interest levied, its submission being it is too excessive.

4. Having heard the learned counsel on all sides and having gone through the tribunal's record, this Court is of the opinion that the finding returned by the tribunal on the issue of negligence cannot be questioned. The claimants had examined PW-2 as an eye witness, also the person on whose statement the police had registered the corresponding criminal case. His statement clearly shows that the motorcycle of the deceased persons had been hit by the bus from behind, it having come to the junction of the two roads at a high speed which apparently was beyond the control of its driver. The evidence of PW-2 was not controverted by the driver by any effective cross-examination. He (the driver of the bus) was not called upon to depose to give his version of the sequence of events leading to the collision. With his explanation having been kept out, there is no reason why the

testimony of PW-2 should be disbelieved. The plea of the insurance company on this ground is, thus, rejected.

5. The rate of interest levied by the tribunal is unduly high. Following the consistent view taken by this Court, the award is modified to that extent. The rate of interest shall be 9% per annum on which the insurance company would be liable to satisfy the award in each case.

6. In view of the decision dated 12th July, 2018 in *CM(M) 1104/2013* titled as *M/s the New India Assurance Co. Ltd. vs. Sh Zakir Hussain & Anr.*, the plea based on document which was used for obtaining license for the period in question being fake, cannot be accepted, particularly in absence of any material indicating that the owner of the vehicle (the person insured) was party to any such design.

7. The appeals stand disposed of in above terms.

8. By order dated 17.03.2017 on the file of MAC Appeal No. 269/2017 and by order dated 22.03.2017 on the file of MAC Appeal No. 289/2017, the insurance company was directed to deposit the entire awarded amount with interest in each case with the tribunal. The tribunal shall release the amounts to the claimants in terms of the award, as modified above, refunding the excess to the insurance company.

9. Statutory amounts shall be refunded.

R.K.GAUBA, J.

JULY 13, 2017/nk