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

Decided on: 26th July, 2017

\+ MAC.APP. 411/2008, C.M.Nos.10368/2008 & 2754/2009

D.T.C. ..... Appellant

Through: Mr.Sarfaraz Khan, Adv.

versus

SUBHASH CHAND & ANR. ..... RespondentS

Through: Mr.Varun Goswami and Ms.Shourya Mehra, Advocates for R-4.
Mr.Pradeep Gaur, Mr.Amit Gaur and Mr.Pankaj Seth, Advocates for R-5/ insurance company

\+ MAC.APP. 471/2008

NATIONAL INSURANCE CO.LTD. ..... Appellant

Through: Mr.Pankaj Seth, Advocate

versus

SUBHASH CHAND & ORS. ..... Respondents

Through: Mr.Varun Goswami and Ms.Shourya Mehra, Advocates for R-4.
Mr.Sarfaraz Khan, Adv. for R-5/DTC

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

JUDGMENT (ORAL)

1. Ms.Pooja Chand, a young unmarried girl pursuing studies, having appeared in exam for the diploma course of Company Secretary, suffered injuries in a motor vehicular accident that occurred at about 5:00 p.m. on 2 5.08.1998 at Maxmullar Marg, near Block-16, Lodhi Colony, New Delhi and died in the consequence. The deceased was travelling at the time of accident on the motor cycle no.DEX-5922 ("the motorcycle") which was hit by bus no. DL-1P-2021 ("the bus"). Her parents, the first and second respondent (hereinafter "the claimants"), instituted accident claim case (Old Petition no.55/99 later registered as petition no.415/2004) on 09.03.1999 impleading Anil, the driver of the bus, he being the third respondent in MAC Appeal No.411/2008 in addition to its owner Gajender Singh, he being fourth respondent in MAC Appeal No.411/2008, besides Delhi Transport Corporation (DTC) and National Insurance Company Limited (insurer), they being the appellants in these two connected matters. The bus was registered in the name of Gajender Singh, and in terms of an agreement taken out by him with DTC, it was being plied on stage carriage routes in Delhi under DTC, Gajender Singh, the registered owner of the bus having taken out an insurance policy against third party risk from the insurer covering the date of accident.

2. After inquiry, the tribunal rendered its judgment on 10.04.2008 *inter alia* returning findings that the death of Pooja Chand had occurred due to negligent driving of the bus. It was also found, on the basis of evidence adduced by the insurer, that Anil, the driver of the bus, did not hold a valid or effective license at the relevant point of

time, the copy of the document purported to be driving license no.54678/1996 issued by transport authority, Faridabad having been found to be fake.

3. The tribunal awarded compensation in favour of the claimants in the sum of Rs.7,70,000/- with interest @ 9 % per annum from the date of filing of the petition and directed the insurer to pay accepting its plea of breach of terms and conditions of the insurance policy for the reason that the bus driver did not hold a valid and effective driving license. The tribunal proceeded to further observe that since the bus was being plied under kilometer scheme of DTC, there was also a liability cast on DTC to ensure that the bus was driven by a person who held a valid and effective license, holding that the bus was under "constructive possession" of the DTC. The Tribunal, while accepting the plea of breach of terms and conditions of the policy, has given liberty to the insurer to recover 50% of the amount paid as compensation each from the owner of the bus (Gajender Singh) and from DTC.

4. It may be mentioned here that the first claimant Subhash Chand died during the pendency of these appeals. This fact was duly noted and in terms of order dated 17.03.2010 in MACA 411/2008, the rights accruing in his favour under the impugned award have been treated as having devolved upon the other claimant (second respondent) Urmila Chand.

5. DTC has come up with appeal (MAC appeal 411/2008) questioning the above findings and directions, its contention primarily resting on the terms and conditions of the agreement dated 18.03.1998

with Gajender Singh wherein, as per clause 7, the responsibility to ensure that the driver deployed on the bus possessed a valid driving license for such a vehicle and to answer the liability in tort or before the accident claims tribunal were that of the registered owner. The insurance company, by its cross appeal (MAC Appeal 471/2008), presses for total exoneration.

6. Learned counsel for both the appellants, and for Gajender Singh (respondent no.4 in both the appeals), have been heard and record perused.

7. The copy of the agreement dated 18.03.1998 which was placed before the Tribunal has been submitted with its appeal by DTC. Para 7 of the said agreement reads thus:

> *"7. The driver on the bus shall be provided by the registered owner of the private bus on his cost and he (driver) shall possess a valid licence for driving heavy vehicle with PSV endorsement as per Motor Vehicle Act, 1988. Delhi Transport Corporation shall not be liable for any criminal and/or civil liability arising out of any accident or any action of tort and the registered owner of the private bus shall be responsible for defending the driver in the criminal and/or civil court in respect of the criminal case against the driver and/or claim cases either before Motor Accident Claim Tribunal or before any Civil Court against the registered owner."*

8. It is clear from the above stipulation that in the agreement between Gajender Singh and DTC it was squarely the responsibility of the registered owner of the bus to ensure that the driver deployed by him on the bus, when it was plying under the kilometres scheme of

DTC, possessed a valid driving licence for driving a heavy vehicle with PSV endorsement in terms of the law.

9. The owner (Gajender Singh) relies on *Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and Ors., (1997) 7 SCC 481* and *National Insurance Co. Ltd. Vs. Deepa Devi and Ors., (2008) 1 SCC 414* to contend that it is DTC which had taken over the vehicle on hire and which should bear the responsibility to pay the compensation. The counsel read out various terms and conditions of the agreement dated 18.03.1998 in an endeavour to show that control over the deployment of the bus was vesting with DTC it having the discretion to decide not only the routes but also to depute a conductor.

10. On careful perusal of the terms and conditions of the said agreement, however, this court finds that there being no case of any party about negligence on the part of the conductor, the liability in the present case could not have been, and has correctly not been, fastened on the DTC. In fact, during the inquiry before the Tribunal this was not even raised as a defence by the registered owner of the vehicle. The driver was deputed by the registered owner and in terms of the afore-quoted clause of the agreement, it was his exclusive responsibility to ensure that the driver possessed a valid licence. The finding returned that the document presented as the licence was forged and fabricated is based on evidence which cannot be wished away. Even at the stage of appeal, it is not the contention of the registered owner that the driver held a valid or effective driving licence. The breach of essential terms and conditions of the insurance policy on the

part of the registered owner is, therefore, writ large on the facts and circumstances which have been brought out. Therefore, the case of *Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and Ors., (1997) 7 SCC 481* and *National Insurance Co. Ltd. Vs. Deepa Devi and Ors., (2008) 1 SCC 414* (supra) do not assist the registered owner.

10. The decision of the Supreme Court in Civil Appeal No.5293/2010 *Managing Director vs. K.S.R.T.C. vs. New India Insurance Company Limited & Ors.* dated 27.10.2015 is complete answer to the contentions raised by DTC in its appeal. The question raised before the Supreme Court in the said case was as to whether, in the wake of lease agreement entered into by the registered owner of the bus with Karnataka State Road Transport Corporation (KRSTC), liability to make payment to the claimant in accident case could be fastened against the registered owner, insurer and KSRTC and further as to whether KSRTC could recover such amount from the registered owner and its entitlement to seek indemnification from the insurer. The conclusions in para 33 of the said judgment read as under:

> *"33. In view of the decision in HDFC Bank Limited v. Reshma & Ors. (supra), the insurer cannot escape the liability, when ownership changes due to the hypothecation agreement. In the case of hire also, it cannot escape the liability, even if the ownership changes. Even though, KSRTC is treated as owner under Section 2(30) of the Act of 1988, the registered owner continues to remain liable as per terms and conditions of lease agreement lawfully entered into with KSRTC."*

11. In view of the above position of law, liability could not have been fastened on the DTC. The registered owner (Gajender Singh) only could be held liable on the principle of vicarious responsibility. The insurer (appellant) in MACA 471/2008 would have been liable to indemnify but for the breach of terms and conditions of the insurance policy. The insurer has been rightly burdened with the responsibility to initially satisfy the award by making payment of the compensation to the claimant but its rights have been protected, it having been conferred with the liberty to recover the amount paid to the claimant from the registered owner (the insured).

12. In these circumstances, the direction of the tribunal by the impugned judgment holding the DTC responsible to bear 50% of the liability is set aside. It is instead directed that the entire compensation with corresponding interest shall be the liability of the registered owner (Gajender Singh).

13. By order dated 28.07.2008 in MACA 411/2008, DTC was directed to deposit 50% of the awarded amount with interest with the Registrar General as a pre-condition to stay against execution. The Registrar General was directed to keep the said amount in FDR and claimants were permitted to withdraw 25% of the said amount with proportionate interest on furnishing adequate security. The balance lying in deposit shall be refunded to DTC. It would be cumbersome if the insurance company is directed to reimburse the amount paid by DTC to the claimant and then recover it from the registered owner. The proper course would be to give such liberty to DTC to directly recover from the registered owner. Ordered accordingly. For such

purposes, DTC may take out appropriate proceedings before the Tribunal.

14. By order dated 18.01.2010 in MACA 471/2008, the insurer had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch. By subsequent order dated 19.03.2010, ten percent (10%) of the amount thus deposited by the insurance company was allowed to be released to the claimant and the balance directed to be kept in fixed deposit in her name for different periods. She was granted liberty to have the credit of interest accruing on such fixed deposits from time to time.

15. The amount lying in fixed deposits shall now be released to the claimant in terms of the impugned judgment.

16. The insurer may take out appropriate proceedings before the Tribunal for enforcing the recovery rights against the registered owner of the vehicle (Gajender Singh).

17. The statutory amount deposited by both the appellants shall be refunded.

18. The appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

JULY 26, 2017
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