

\$~12 to 15 (*common order*)

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

Decided on: 27th July, 2017

+ MAC.APP. 478/2015

ORIENTAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Tarkeshwar Nath, Adv.
with Mr. Onkar Nath, Adv.

versus

SUKHPAL SINGH & ANR Respondents

Through: Mr. Abhishek Rai, Advocate for
R-2 along with R-2 in person.

+ MAC.APP. 480/2015

ORIENTAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Tarkeshwar Nath, Adv.
with Mr. Onkar Nath, Adv.

versus

OM PRAKASH & ANR Respondents

Through: Mr. Abhishek Rai, Advocate for
R-2 along with R-2 in person.

+ MAC.APP. 481/2015

ORIENTAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Tarkeshwar Nath, Adv.
with Mr. Onkar Nath, Adv.

versus

SURAJ PAL & ANR Respondents

Through: Mr. Abhishek Rai, Advocate for
R-2 along with R-2 in person.

+ MAC.APP. 320/2016

ORIENTAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr. Tarkeshwar Nath, Adv.
with Mr. Onkar Nath, Adv.

versus

BEENA PURI & ORS

..... Respondents

Through: Mr. Jitesh Vikram Srivastava,
Adv. for R-1 to R-3.
Mr. Abhishek Rai, Advocate for
R-4 along with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 15.06.2012, Mohd. Ikram (one of the respondents in these appeals), registered owner of car make Qualis bearing registration No.DL-3CV-0019 ('the car' hereinafter), was driving it in direction of village Hangoli, District Yamuna Nagar, Haryana from Delhi carrying along several persons, including Ravinder Kumar Puri, Sukhpal Singh, (first respondent in MAC APP.478/2015), Om Prakash (first respondent in MAC APP.480/2015) and Suraj Pal (first respondent in MAC APP.481/2015). The car had reached in the area of village Chakchan Pur More at about 12:15 p.m., where due to high speed, the said driver (Mohd. Ikram) lost control and the vehicle fell down from the slope into a ditch on the road side, This resulted in said Ravinder Kumar Puri, Sukhpal Singh, Om Prakash and Suraj Pal suffering injuries and the former (Ravinder Kumar Puri) died in the

consequence. The widow and other members of the family of Ravinder Kumar Puri, dependent upon him, they being first to third respondents (in MAC APP.320/2016), besides one another instituted accident claim case (Suit No.75/2013) on 28.02.2013 impleading Mohd. Ikram as first respondent and Oriental Insurance Company Limited (appellant in these appeals) as the second respondent, it being the insurer of the car for the relevant period. The other three persons injured in the accident, *i.e.*, Sukhpal Singh, Om Prakash and Suraj Pal, also instituted accident claim cases (Suit No.110-112/2013) on 02.04.2013 with similar array on the side of the respondents seeking compensation for injuries suffered.

2. The three cases wherein compensation was sought for injuries suffered were decided by common judgment of the Motor Accident Claims Tribunal (the tribunal), it being passed on 04.09.2014. The contention of the claimants about the accident having occurred due to negligent driving on the part of Mohd. Ikram was upheld and compensation was awarded in each case, the liability having been fastened against the insurer (now the appellant).

3. In the claim case on account of death of Ravinder Kumar Puri (Suit No.75/2013), the inquiry resulted in judgment dated 21.01.2016. Again, the plea of negligent driving of the car by Mohd. Ikram was upheld and compensation was awarded.

4. In the case of claim arising out of death of Ravinder Kumar Puri, it is submitted by the insurance company that in working out the loss of dependency, the tribunal did not take out the family pension of

Rs.10,000/- which the widow Beena Puri (PW-1) had admitted to be in receipt after the death, the deceased being in the government employment at the relevant point of time. This contention had not been urged before the tribunal.

5. Be that as it may, the plea must be noted and rejected with reference to the following observations of the Supreme Court in *Helen C. Rebello vs. Maharashtra State Road Transport Corporation & Anr.*, (1999) 1 SCC 90, which reads as under:-

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc.

though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.

(emphasis supplied)

6. Reiterating the above law, the Supreme Court in later case reported as *Vimal Kanwar & Ors. vs. Kishore Dan & Ors.*, (2013) 7 SCC 476, observed that though the benefits such as provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all "pecuniary advantage" receivable by the heirs on account of one's death, "all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death" and such amounts "will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction".

7. The contention of the insurance company, thus, is repelled.

8. In the other cases, by way of amended pleadings, the insurer had raised the defence that it was not liable since the insurance policy that had been issued restricted the liability of the insurer to “*terms and conditions of the policy*”, reference in this regard being made, by evidence, to a circular (Ex.R3W1/C) issued on 16.11.2009. This plea was rejected by the tribunal and, by judgment dated 21.01.2016 liability was fastened again on the insurer (the appellant).

9. These appeals have been preferred questioning the decision of the tribunal in the two judgments, one being common to the three injuries cases and the second relating to the death case, the contention urged at the hearing being that it was “*liability only policy*”

10. Pertinently, during the inquiry before the tribunal in the three injury cases the aforesaid contention had not even been urged as defence and, therefore, the tribunal had no occasion to deal with the said issue. The appellant, however, was permitted, on its applications, to lead additional evidence during the pendency of the three connected appeals arising out of the claim for compensation for injuries suffered and has examined, pursuant to the said liberty Ms. Bharti Meena (AW-1), its administrative officer, her deposition on the strength of her affidavit (Ex.AW1/A) having been recorded on the file of MAC APP.478/2015, it requiring to be read in the context of all these connected appeals.

11. Noticeably, the evidence of AW-1 recorded as additional evidence during the pendency of these appeals is more or less reiteration of the evidence of Mr. B.C. Sharma (R3W1), another administrative officer, who had been examined before the tribunal in the claim arising out of death case.

12. The learned counsel for the insurance company places reliance on *United India Assurance Company Limited vs. Tilak Singh and Ors.*, (2006) 4 SCC 404 and *Oriental Insurance Company Limited vs. Sudhakaran K.V. and Ors.*, (2008) 7 SCC 428 to contend that the insurance policy in these cases would not cover the risk of third party. Reference is made to the circular dated 16.11.2009 (Ex.R3W1/C) and to the copy of the policy certificate (Ex.AW1/1).

13. The tribunal while deciding the claim case arising out of death noted that there was no evidence brought on record to show that circular dated 16.11.2009 had been brought to the notice of the person insured, the policy document clearly indicating that such circular was not part of the terms and conditions indicated therein.

14. The above deficiency has come to the fore yet again in the additional evidence led through AW-1. The witness admitted that the policy certificate would not indicate any terms or condition except the limitation as to use of the vehicle. But then, she pointed out to a note on the second page of the document requiring reference to the company's website for eliciting the conditions, warranties, etc. The contract of the insurance has to be read and construed on the basis of policy document issued. Reference elsewhere cannot be read into the

contract. There being nothing in the policy document limiting the liability of the insurance company, the plea cannot be accepted.

15. Thus, the appeals are devoid of any substance and dismissed.

16. The appellant insurance company is directed to satisfy the award in the three injury cases by requisite deposits with the Tribunal within thirty days.

17. In the case of death (MAC APP.320/2016), the insurer had been directed to deposit the entire awarded amount with upto date interest within thirty days. Though the record does not indicate compliance, if such deposit has been made, the amount shall be released to the claimants. In case there is default, the insurance company would be duty bound to deposit the amount with the Tribunal forthwith, making it available to be released to the claimants.

18. Statutory deposits shall be refunded after the proof is adduced of due satisfaction of the award in each case.

19. The appeals are disposed of with these directions.

20. Pending applications also stand disposed of.

R.K.GAUBA, J.

JULY 27, 2017

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