$~R-240 & R-241 *(common order)*

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

Decided on: 20th September, 2017

+ MAC APPEAL No. 604/2010

+ MAC APPEAL No. 2/2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

MITHLESH TIWARI & ORS. ..... Respondents
Through: Nemo.

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

JUDGMENT (ORAL)

1. Vinod Kumar Tiwari was riding motorcycle on 08.07.2008 when he came to be involved in a collision with bus bearing registration No.DL-1P-6841 (the bus) driven by the seventh respondent (Satish Kumar), it being a vehicle registered in the name of the eighth respondent (Yudhisthar). He suffered injuries and died in the consequence. His wife and other members of the family dependent on him, they being first to sixth respondents (collectively, the claimants), instituted accident claim case (Suit No.01/2009) on 13.10.2008 seeking compensation under Section 166 of the Motor Vehicles Act, 1988, on the averments that the accident had occurred

due to negligent driving of the bus. The appellant insurance company was shown in the array of respondents on the averment that the bus was insured with it to cover third party risk for the period in question, this apparently on the basis of information made available by the eighth respondent (registered owner of the bus). The tribunal held inquiry in the course of which the eighth respondent, joined by the seventh respondent, put in contest, *inter alia,* relying on plea of insurance cover. The evidence on this issue was adduced by them wherein eighth respondent appeared as witness (R2W4), also examining Ashok Kumar Tiwari (R2W3), agent of the appellant insurance company, stationed in Noida, Sector 16, besides other witnesses relating to different facts. In the course of such evidence, reliance was placed on a document (Ex.R2W2/2) purporting to be an insurance policy issued in favour of the eighth respondent in respect of bus for the period 05.07.2008 to 04.07.2009. R2W3 claimed that he, as "SO" for Sector 16, Noida branch of the insurance company, had received the premium from the eighth respondent, in cash, in the amount of Rs.14,281/- on 05.07.2008 which was deposited by him with the insurance company on the same date and in which view the certificate-cum-policy had been issued, it being dated 05.07.2008.

2. In contrast, the insurance company through its witness Gaurav Gaba (R3W1) Manager Legal proved proposal form (Ex.R3W1/B), copy of the cheque (Ex.R3W1/C) dated 09.07.2008 for an amount of Rs.14,281/- towards premium, copy of inward tracking system (R3W1/D), copy of the quotation (Ex.R3W1/E), and the original

insurance policy (Ex.R3W1/A) issued on such basis by the appellant insurance company, the said policy showing date of its commencement to be 09.07.2008.

3. The insurance company argued before the tribunal that the document relied upon by the eighth respondent, in which regard his witnesses (R2W3 and R2W4) had deposed, was forged and fabricated, the documents having been created by them in collusion with each other.

4. The tribunal, by the impugned judgment dated 07.07.2010, accepted the claim of the claimants for compensation on the basis of finding that the death of Vinod Kumar Tiwari had been caused due to negligent driving of the bus by the seventh respondent. Compensation determined by the said judgment was ordered to be paid by the appellant insurance company, its plea regarding forgery of the documents showing the insurance cover from 05.07.2008 having been rejected with observation that such fact had been *"reasonably proved",* the insurance company being *"at liberty to take action in accordance with law against their agent or any person who has committed forgery of the policy",* since such dispute *"would be beyond the scope of"* the inquiry before the tribunal.

5. The appeal at hand was filed by the insurance company submitting grievance that the liability to pay the compensation has been fastened on it on the basis of forged and fabricated documents, the approach of the tribunal in short-shifting the serious issue raised by the insurance company being incorrect.

6. The appeal of the insurance company (MAC APP.604/2010) was entertained by order dated 13.09.2010 when notice was issued to the respondents and the operation of the impugned award was stayed, subject to the insurance company depositing the entire awarded amount. The insurance company complied with the said directions and on the basis of its submission, by order dated 20.01.2011, it was directed that the said deposited amount would be kept in fixed deposit receipt initially for a period of six months with provision for auto-renewal. On 22.02.2011, the claimants moved an application (CM No.1312/2011) seeking release of the awarded amount and, there being no opposition by the insurance company, the prayer was granted and the amount deposited by the insurance company was made over to the claimants for satisfaction of their claim under the award.

7. Against the above backdrop, the issue raised by the insurance company cannot survive against the claimants but can be considered only *qua* seventh and eighth respondents.

8. It may be added here that the claimants had submitted on 27.11.2010 objections to the appeal. A perusal of the said objections would show that they related to the contentions of the insurance company vis-à-vis forgery of the documents concerning the insurance cover. It appears, on account of some confusion, the said objections were treated as cross-objections and, therefore, ordered to be registered as independent appeal (MAC APP.2/2011). Given the above facts and the view being taken herein, the said objections of the claimants also would not need any further consideration since the plea

of the insurance company will now have to be treated as one for recovery rights only against seventh and eighth respondents, *i.e.,* driver and registered owner of the bus.

9. The seventh and eighth respondents have not appeared when the appeal is taken up for hearing.

10. This court finds the observations recorded and the reasons set out by the tribunal in rejecting the contention of the insurance company about absence of the insurance cover for the relevant period to be wholly misdirected and erroneous. The issue as to whether the vehicle is covered by a valid and effective insurance policy is an issue which directly and substantially arises in the inquiry into a claim petition before the accident claims tribunal and it has to be determined in the same very proceedings. The contentions urged by the insurance company to the effect that the document presented by the driver and owner, or affirmed at their instance by R2W3, in collusion, is very serious and required due consideration and determination. The issue cannot be sidelined and rather will have to be adjudicated upon.

11. For the foregoing reasons, the issue as to whether the documents relied upon by the seventh and eighth respondents were genuine or otherwise or, to put it simply, as to whether the bus was covered by a valid insurance policy on the date of accident is remitted to the tribunal for further inquiry and proper adjudication. For such purposes, the parties*, i.e.,* the appellant insurance company on one hand and the driver and the owner of the offending vehicle (the bus) on the other are directed to appear before the tribunal on 25th October,

2017. The issue as to whether the appellant insurance company shall be liable to indemnity the eighth respondent (owner of the bus), thus, stands revived and the impugned judgment to the extent it made observations having a bearing on the same stands set aside.

12. The tribunal will give additional opportunity to all sides to lead further evidence, if any. But since seventh and eighth respondents have not appeared at the hearing on the appeal, in all fairness, before proceeding further, the tribunal shall issue notices to them to secure their presence.

13. If on conclusion of such further inquiry, as has been ordered above, the tribunal were to conclude that the contention of the insurance company about the forgery is correct, it shall not only grant it recovery rights against the driver and owner of the offending bus but also consider the expediency of initiating appropriate action under the criminal law.

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

15. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 20, 2017
vk