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

Decided on: 25th July, 2017

+ **MAC APPEAL No.455/2009**

SURINDER PAL

..... Appellant

Through: None.

versus

NIC & ORS.

..... Respondents

Through: Mr. Pradeep Gaur & Mr. Amit
Gaur, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Chanda, aged 10 years, was moving on foot with her father Mangna (third respondent) on 7.10.2006 at about 4.00 p.m. in the area of Chaudhary Hira Singh Park, Azadpur, and when she was near a stationary tempo bearing registration no. HR 06 GA 0343, admittedly of the appellant, another tempo bearing no. UP 15 9987 driven by the second respondent herein came, hitting against the former tempo, which, in turn, hit her, resulting in injuries causing her death. The parents of Chanda, third and fourth respondents (claimants), instituted accident claim case (petition no. 1203/2006) on 03.11.2006 initially invoking Section 166 of Motor Vehicles Act, 1988 to seek compensation impleading, besides the driver-cum-owner of the latter vehicle, the appellant and insurer of his vehicle, it being the first

respondent herein. During the proceedings, on the request of the claimants, the petition, was converted into one based on structured formula on principle of no-fault liability under Section 163-A of Motor Vehicles Act, 1988.

2. The tribunal, after inquiry, returned finding affirming the case that the death had occurred in the accident involving use of both the vehicles. It awarded compensation in the sum of Rs. 2,50,000/- , but directed the insurer of the vehicle of the appellant to pay. The insurer had taken the plea of breach of terms and conditions of the insurance policy on the ground that the driver did not hold a valid or effective license on the date of the accident and that there was another breach of terms and conditions of the policy since there was no valid permit for the Union Territory of Delhi. On this ground, the defence was accepted and the insurer (first respondent) was granted recovery rights against the appellant.

3. The appeal was filed in September, 2009. The appellant assails the view taken by the tribunal in the impugned judgment. The second respondent, though served, has failed to appear to put in any contest. The appeal was put in the list of 'regulars' as per order dated 15.04.2010. When it is taken up for hearing no one has appeared for the appellant. Be that as it may, since the appeal is one of the oldest on the board of this Court, having heard the learned counsel for the insurance company and, having gone through the tribunal's record, it is found that it was improper, unfair and unjust to fasten the entire liability on the appellant in an accident which had involved two

vehicles, particularly because the vehicle of the appellant was stationary, it having been hit by the vehicle of the second respondent.

4. The contentions of the appellant with regard to negligence cannot be given any credence since such issues would be inconsequential in a claim case arising out of 163-A of Motor Vehicles Act, 1988. The conclusion of the tribunal about breach of terms and conditions of the insurance policy on account of there being no valid driving licence on the relevant date, however, is debatable in view of the ruling in Supreme Court in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297. The evidence clearly shows that the appellant had a driving licence which was valid till 10.09.2006. It was renewed on 28.10.2006 after the accident had occurred on 07.10.2006. It cannot be said, in these circumstances, that the appellant was disqualified from holding a driving licence or that the accident had occurred on account of he not being capable of driving.

5. But, the fact remains that the vehicle had entered Delhi without a valid permit. In these circumstances, the breach of terms and conditions of the insurance policy was duly proved and, therefore, the right to recovery was correctly granted.

6. This Court is of the opinion that there was no reason why the second respondent should have been let off without any liability being fastened on him. After all, it was his vehicle which was on the move. It was his vehicle which had hit the vehicle of the appellant making it move forward crushing the child to death. In these circumstances, use and involvement of the vehicle of the second respondent had also been

duly proved and consequently the liability should have been equally apportioned amongst the appellant and the second respondent.

7. For the foregoing reasons, the impugned judgment is partially modified. The first respondent is given liberty to recover the amount paid as compensation, in equal proportions from the appellant and second respondent with corresponding interest. For such purposes, the insurance company may take out appropriate proceedings before the tribunal.

8. With these observations, the appeal is disposed of.

R.K.GAUBA, J.

JULY 25,2017

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