$~R-401

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

Decided on: 3rd November, 2017

\+ MAC APPEAL 902/2011

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. A. Jain, Adv. for Ms. Shantha Devi Raman, Adv.

versus

MRS. E. JOHN & ORS. ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. Accident claim case (MACT No.01/02/2011) was registered on 13.12.2002, initially by Mr. F. John (fourth respondent) seeking compensation on account of death of his son Deepak John in motor vehicular accident which had occurred on 02.10.1999, involving Maruti Van bearing registration no.DL-6C-B-9328 (the van). Later, Mr. F. John was transposed as a respondent to the said proceedings, the claim case having been passed by his wife E. John (first respondent) and Ms. Anna, minor daughter of Late Deepak John (second respondent). The case initially presented under Section 166 of Motor Vehicle Act, 1988 was converted, midway the proceedings, into one under Section 163A of Motor Vehicle Act, 1988 to press for compensation to be awarded under the structured formula on the principle of no-fault liability.

2. It appears that the fourth respondent is the registered owner of the van, the case of the parties being that the third respondent, Jaipal, was the driver employed by the registered owner. Concededly, the van was insured against third party risk with the appellant (insurer).

3. The tribunal has returned finding by judgment dated 19.07.2011, which is impugned by the present appeal, about the involvement of the van in the accident driven by the third respondent, it resulting in death of late Deepak John, on the basis of evidence of the fourth respondent (PW1), the first respondent (PW2) and the third respondent Jaipal (R1W1), the last deposing on the strength of his affidavit (Ex.R1W1/A). It may be added here that the third respondent had initially been set *ex-parte*, but he appeared in the proceedings again on 15.04.2011 when he moved an application seeking permission to lead evidence which was allowed, where after his testimony, as mentioned above, was recorded.

4. The insurer, by the appellant at hand, submits that it was not proper on the part of the tribunal to allow the application moved by the third respondent on 15.04.2011 since it had been moved behind the back of the insurance company, there being no application by the said party seeking the *ex-parte* proceedings to be set aside. The insurance company submits that it has been deprived of the opportunity to contest the evidence of R1W1.

5. Having heard the learned counsel and having perused the record, this Court finds no merit in the contentions raised. The case was listed before the tribunal on 15.04.2011. In this view, it was the obligation of the insurance company, which had due notice, to appear

when the matter was taken up. There was no appearance on behalf of the insurance company and since there was no contest to the application, it was allowed and the tribunal proceeded to record the testimony of third respondent, he appearing as R1W1.

6. It is further noted that the insurance company did not appear on four consecutive dates thereafter. The tribunal had even issued a court notice to the counsel for the insurance company by order dated 06.07.2011. The notice was duly served but the counsel would not appear. Eventually, the tribunal proceeded to decide the case by the impugned judgment.

7. There is no explanation for the continued absence on the part of the insurance company before the tribunal with effect from 15.04.2011. In these facts and circumstances, the contention that the evidence of the driver was recorded behind the back of the insurance company cannot be accepted. The appeal is, therefore, dismissed.

8. By order dated 12.10.2011 the insurance company had been directed to deposit the entire awarded amount along with up-to-date interest with the Registrar General within the period specified as a pre-condition to the stay against execution. The amount in deposit would now be released to the claimants in terms of the impugned order.

9. In the foregoing facts and circumstances, the statutory deposit is forfeited as costs in favour of Delhi High Court Legal Services Committee. The registry shall pass on the same accordingly.

R.K.GAUBA, J.

NOVEMBER 03, 2017
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