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

Decided on: 4th September, 2017

+ MAC.APP. 359/2017

ICICI LOMBARD GEN. INS. CO. LTD Appellant

Through: Mr. Garud M.V., Adv.

versus

PINKI AND ORS Respondents

Through: Mr. Anshuman Bal, Adv. for R-
1 to 4.

+ MAC.APP. 371/2017

ICICI LOMBARD GEN. INS. CO. LTD Appellant

Through: Mr. Garud M.V., Adv.

versus

RAKESH KUMAR AND ORS Respondents

Through: Mr. Anshuman Bal, Adv. for R-
1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 23.04.2012, a motor vehicular accident occurred at about 9.30 a.m., in which a tempo bearing registration no. UP 14CT 8531 turned turtle, it resulting in injuries being suffered, amongst others, by two persons namely Pintu and Rakesh, both of whom were travelling in the said goods vehicle at the relevant point of time, the former

(Pintu) dying in the process. Two accident claim cases, one (MACT No. 209/2012) on account of death of Pintu instituted by his wife and other members of the family dependent upon him (they being first to fourth respondents in MAC Appeal no. 359/2017) and, the other (MACT No. 227/2012), by Rakesh Kumar (first respondent in MAC Appeal No. 371/2017) were instituted on 31.05.2012. In each, the driver (Sunil Kumar), the owner (Noor Ahmed) and ICICI Lombard General Insurance Company Ltd. (insurer) of the tempo were impleaded as party respondents, the said insurer now being the appellant in these appeals before this Court. The tribunal clubbed the two cases and after inquiry, by judgment dated 20.01.2017, upheld the claim of compensation on the basis of finding that the accident had occurred due to negligent driving of tempo by the said driver Sunil Kumar (respondent in these appeals). It has awarded compensation in favour of the respective claimants fastening the liability on the insurer of the tempo to pay.

2. The appeals are pressed by the insurer on the ground that Sunil, driver of the tempo, after the accident had addressed the local police official in writing (Ex.PW-2/10), *inter alia*, stating that the victims had boarded the vehicle on their own without seeking his prior permission, even while the tempo was on its way with the cargo (vegetables) that had been purchased from a local market. On the basis of such material introduced in the evidence through witness (R3W1) examined on behalf of the insurance company, it has been submitted that the victims were gratuitous passengers and, therefore,

no liability can be fastened against the insurer, such use being in breach of terms and conditions of the insurance policy.

3. The tribunal considered the above-said submission of the insurer but rejected the same with the following observations:

“... Insurance Company has examined R3W1 who deposed as per Ex.PW2/10, both the injured and the deceased had climbed the vehicle without the permission of the driver and that they were gratuitous passengers. Therefore, the insurance company is not liable to pay any compensation. However, Ex.PW2/10 itself shows that respondent No.1 Sunil Kumar was carrying vegetables in his vehicle at the time of the accident. He has further stated that the vegetable sellers sitting in the vehicle at the time of accident were injured. This averment by R-1, in the complaint to the SHO Ex.PW2/10 itself shows that the deceased persons were traveling in the offending vehicle as owner of goods and were not gratuitous passengers.”

4. This Court finds the reasons set out by the tribunal for rejecting the contention of the insurance company to be correct and proper. It may be added that Sunil Kumar obviously was not telling the entire truth when he addressed the above-mentioned letter (Ex.PW-2/10) to the local police officer. He tried to disown responsibility for the accident on the ground that the rear right wheel of the tempo had come out. Noticeably, while putting in contest, the registered owner of the vehicle (Noor Ahmed), impleaded as second respondent before the tribunal, in his written statement, had clearly stated that the vehicle had been purchased only fifteen days prior to the occurrence and, therefore, there was no question of bad condition of the tyre being the cause for the accident. Pertinent to add, the driver was not called upon

even by the insurance company to enter the witness box to elaborate on what had been stated by him to the police. Such version of the driver given to the police during investigation by it, without it being tested during the inquiry, cannot be acted upon.

5. The appeals are, therefore, devoid of substance and consequently they with the accompanying applications are dismissed.

6. By order dated 18.04.2017, the insurance company had been directed to deposit the entire awarded amounts with interest with the registry of this Court. The same was directed to be kept in an interest bearing fixed deposit account without any disbursement. The amounts deposited by the insurance company shall now be released to the respective claimants in terms of the impugned judgment.

7. The statutory deposits shall be refunded.

SEPTEMBER 04, 2017

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R.K.GAUBA, J.