

\$~R-295

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

Decided on: 9th October, 2017

+ **MAC APPEAL 96/2011**

BALWAN SINGH

..... Appellants

Through: None

versus

NUPUR SHARMA & ORS

. ... Respondents

Through: Mr.Pankaj Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant is the registered owner of Maruti Van bearing registration No. DL-9C D 8117 which was being driven on the relevant date and time by the second respondent (the driver) when it came to be involved in a motor vehicle accident in front of Apollo Hospital within the territorial jurisdiction of PS Sarita Vihar on 08.12.2005 resulting in injuries being suffered by the first respondent (claimant), giving rise to cause of action in her favour to seek compensation by instituting claim petition (Suit No. 454/08) on 02.06.2006. The van was admittedly insured against third party risk with the third respondent (insurer). The Tribunal held inquiry and, on the basis of evidence led, upheld the case of the claimant for compensation making an award in her favour by judgment dated 28.07.2009. While directing the insurer to satisfy the compensation, it

was granted recovery rights against the appellant on the basis of finding that the Van though insured as a private car, meant for personal use, was being plied for commercial purpose as a taxi.

2. The appeal at hand was filed by registered owner of the offending vehicle mainly to submit that the above finding was without any basis, there being no such specific plea taken in the written statement of the insurance company and there being no evidence led in support.

3. The appeal was admitted and directed to be put in the category of Regulars as per order dated 05.07.2016. When it is taken up for hearing there is no appearance on behalf of the appellant. The matter has been considered with the assistance of learned counsel for the insurance company and by perusal of record.

4. Both contentions in the appeal as noted above are found to be misplaced. The insurance company had taken a specific plea in its written statement (refer paras 2A and 6A of the preliminary objections and para 17 of the pleadings in answer to the claim petition) as to it not being liable since the vehicle was being used not as a private car but for hire. The Tribunal has noted, in the impugned judgment, the evidence of the claimant (PW-1) revealing that the Van was carrying her, and certain other persons, on hire charges being paid. This part of evidence was not refuted by the appellant, inasmuch as he did not lead any evidence in rebuttal and in spite of the opportunity given, the driver of the Van was never examined. The mere suggestion during cross-examination of PW-1 that the appellant had sent his driver “to pick up his known students” is just in the air. It was not clarified as to

how PW-1 was a known person. On the contrary, she was categorical in deposing that she had hired this vehicle as it was coming from her college, her regular college bus being not available on the date in question.

5. In above view, the finding returned by the Tribunal does not call for any interference. The appeal is found devoid of any substance and, therefore, dismissed.

6. By order dated 07.12.2012 the appellant was directed to deposit Rs.1,30,000/- with up to date interest with the Registrar General of this Court within the period specified as pre-condition for stay against the execution of the award. The appellant deposited Rs.1,25,000/- in the form of three banker's cheque and submitted it in the Court on 26.04.2013 alongwith the statutory amount of Rs.25,000/- urging that it could be availed in case he remained unsuccessful in the appeal. The proceedings recorded on 25.09.2013 would show the appellant deposited the said three banker's cheques. The amount deposited alongwith statutory amount shall be released by the Registry to the insurance company with accrued interest towards satisfaction of its recovery rights. For the balance amount, the insurance company is at liberty to take out appropriate remedies before the Tribunal.

R.K.GAUBA, J.

OCTOBER 09, 2017

mr