$~R-613-614

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

Decided on: 01st December, 2017

\+ MAC APPEAL 1073/2012 and CM 20640/2013

THE UNITED INDIA INSURANCE COMPANY LTD. ... Appellant

Through: Mr. D.D. Singh and Mr. Navdeep Singh, Advocates

versus

PRABHA DEVI & ORS. ..... Respondents

Through: None

\+ MAC APPEAL 1082/2012 and CM 17240/2012

THE UNITED INDIA INSURANCE COMPANY LTD. ... Appellant

Through: Mr. D.D. Singh and Mr. Navdeep Singh, Advocates

versus

SAMILA KHATOON & ORS. ..... Respondents

Through: None

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

JUDGMENT (ORAL)

1. By these appeals, the insurance company on which the liability to pay the compensation has been fastened questions the common judgment dated 06.07.2012 rendered on the respective claims of the

first and second respondent in each case, on account of deaths of their bachelor sons Charan Singh Rawat and Javed in a motor vehicular accident that had occurred on 27.01.2011 due to the negligent driving of a Maruti Alto car bearing registration no.DL-3CR-3872, which was insured against third party risk with the appellant (insurer) for the period in question.

2. The counsel for the appellant argued that no proper proof of the employment of the deceased persons was adduced as no official from the employers were called in. It is noted that both the claim cases arose out of the detailed accident reports (DARs) submitted by the local police on the basis of evidence collected during investigation of corresponding first information report (no.22/2011) of police station Hazrat Nizamuddin. The claimants had proved in the course of evidence the salary slips (Ex. R3W1/1 and R3W1/2) which evidence has remained unimpeached and unchallenged. In that view of the matter, the argument is devoid of substance.

3. It is then argued on the strength of the decision of the Supreme Court in *Bhagyalakshmi and Ors. Vs. United Insurance Company Ltd. And Anr., (2009) 7 SCC 148* and of this court in *United India Insurance Company Vs. Kusum Jindal, MACA 980/2006* by order dated 31.05.2007 that the policy was an 'Act only' policy and therefore, the liability could not be fastened against the insurer. On being asked, the counsel conceded that no such defence was pleaded before the tribunal. The contention raised consequently is repelled. The contention that it was the liability of the tribunal to hold an inquiry under Section 166, leads the insurance company nowhere as it

was also the obligation of the insurer to assist the tribunal by raising all appropriate defences at the appropriate stage.

4. Thus, both the appeals and the pending applications are dismissed.

5. By order dated 28.09.2012 in MACA 1073/2012, the insurance company had been directed to deposit the awarded amount with up-to-interest with UCO Bank, Delhi High Court and by orders dated 06.08.2013 and 03.02.2014, some amount was released in favour of the claimants. The balance with accrued interest shall also now be released to the claimants.

6. By order dated 01.10.2012 in MACA 1082/2012, the insurance company had been directed to deposit seventy five percent (75%) of the award amount with proportionate interest with UCO Bank, Delhi High Court Branch and by order dated 12.08.2013, the deposited amount was released to the claimants. The insurance company is directed to satisfy the award by requisite deposit of the balance with the tribunal within 30 days making it available to be released to the claimants.

7. The statutory deposits made by the insurer in each case are forfeited as costs in favour of Delhi High Court Legal Services Committee and shall be made over to it accordingly.

R.K.GAUBA, J.

DECEMBER 01, 2017
yg