

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

*Date of decision: January 25, 2017*

+ MAC. APP. 580/2008

NATIONAL INSURANCE CO. LTD. .... Appellant

Through: Mr. Pradeep Gaur, Advocate

Versus

SMT. SUNITA & ORS.

.....Respondents

Through: Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**ORAL**

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1. Impugned Award of 13<sup>th</sup> December, 2007 grants compensation of ₹5,59,528/- (*inclusive of interim award of ₹50,000/-*) with interest @7% p.a. to respondents-claimants on account of death of *Fernandis Singh* in a road accident on 9<sup>th</sup> January, 2003.

2. The factual background of this case is already spelt out in paragraph No.6 of impugned Award and so, needs no reproduction. Suffice to note that appellant is the insurer of truck in question, which had colluded with car of the injured, resulting in the unfortunate death of car driver. The owner and driver have chosen not to contest before learned Motor Accident Claims Tribunal and even in this appeal. None is present on their behalf to contest this appeal. As per order of 10<sup>th</sup> December,

2009, service is complete. It is evident from the order of 23<sup>rd</sup> January, 2009 that this appeal is restricted to the grant of recovery rights to appellant against owner and driver of the offending truck in question. Although impugned Award is silent on the question of recovery rights but learned counsel for appellant-insurer has taken specific ground in this appeal regarding driver of the offending vehicle holding a driving license for motor cycle and light motor vehicle whereas the vehicle insured was a heavy transport vehicle, which was driven by respondent - *Puranmal*. Learned counsel for appellant seeks recovery rights qua respondents i.e. driver- *Puranmal* and owner-*Chanderpal*. To seek recovery rights qua owner and driver of the offending truck, learned counsel for appellant relies upon decision in *Oriental Insurance Co. Ltd. v. Zaharulnisha* (2008) 12 SCC 385.

3. During the course of hearing, attention of this Court was drawn by learned counsel for appellant to the evidence of Assistant Manager (*R3W1*) of appellant-company to point out that notice under Order 12 Rule 8 of CPC was sent to owner of the offending vehicle in question and as per report of Local Transport Authority, the driving license of driver of truck in question was valid for light motor vehicle. It is pointed out that there is evidence of the concerned witness (*R3W2*) from the local transport authority to show that license of truck driver- *Puranmal* was valid for light motor vehicle. Thus, it is submitted that there was no due diligence on the part of owner of offending truck in question and so, owner as well as driver of the offending truck in question are liable to indemnify the appellant, who has already deposited the awarded amount.

Reliance is placed upon Sub-Section 2 of Section 10 of *The Motor Vehicles Act, 1988* to submit that for driving a transport vehicle, a license for that category is required to be obtained.

4. Upon hearing and on perusal of impugned Award, evidence on record and the relevant provisions of *The Motor Vehicles Act, 1988*, I find that there is evidence of R3W1 and R3W2 to the effect that driver of offending truck in question was holding driving license for light motor vehicles, whereas he was driving a transport vehicle i.e. the truck in question. This is clearly in violation of Sub-Section 2 of Section 10 of *The Motor Vehicles Act, 1988* and so, appellant is entitled to be indemnified by owner and driver of the truck in question in respect of the awarded amount with interest, which is purportedly released to respondent-claimant.

5. In view of the aforesaid, impugned Award is modified to the extent of granting recovery rights to appellant qua respondents No.2 & 3 i.e. owner and driver of the truck in question.

6. The statutory amount deposited, if any, be refunded to appellant as per rules.

7. This appeal is disposed of with aforesaid directions.

**(SUNIL GAUR)**  
**JUDGE**

**JANUARY 25, 2017**

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