

\$~R-411 to 413

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

Decided on: 6th November, 2017

+ MAC.APP. 1009/2011

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

PINKI UPPAL & ORS. Respondents

Through: None.

+ MAC.APP. 1012/2011

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

NEMPREET KAUR & ORS. Respondents

Through: None.

+ MAC.APP. 1013/2011

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

SIMRAN & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 23.07.2010, at about 0330 hours, a motor vehicular accident took place involving collision between two vehicles one being car bearing registration no. DL 9CQS 1011 (the car) and, the other, tractor bearing registration no. DL 1E 1713 (the tractor) with trolley attached. As a result of collision, four persons travelling in the car suffered injuries they being Simran, Balwant Kaur, Pinki Uppal and Nempreet Kaur. Four accident claim cases were instituted including one (suit no. 393/2010) by Pinki Uppal, the second (suit no. 394/2010) by Simran, the third (suit no. 419/2010) by Balwant Kaur and the fourth (suit no. 420/2010) by Nempreet Kaur. All the four claim cases were clubbed for inquiry. It may be mentioned here that the appellant (insurer) had been impleaded as a party to each of the said four cases, it admittedly being the insurer against third party risk in respect of the tractor for the period in question, Raj Kumar and Jyoti Construction Company described as the driver and owner respectively being the other party respondents.

2. The tribunal, by judgment dated 27.08.2011, held that accident had occurred due to negligent driving on the part of the said Raj Kumar (respondent in these appeals). The claim for compensation in each case was granted, it having been found that that the claimant Pinki Uppal (first respondent in MAC Appeal no. 1009/2011) had suffered permanent disability, compensation in her case was granted in the sum of Rs. 6,02,000/-. In the claims on behalf of Simran and Nempreet Kaur, the award being in the sums of Rs. 63,993/- and Rs. 54,300/- respectively, the said claimants now being first respondents

in MAC Appeal no. 1013/2011 and 1012/2011. On the petition of Balwant Kaur, the tribunal did not award any compensation.

3. The insurer had raised the plea before the tribunal that it could not be called upon to pay compensation since the attachment of trolley amounted to breach of terms and it was not even covered under the insurance policy. The tribunal directed the insurer to pay the compensation in the three cases but granted right to recover the said amounts from the registered owner (Jyoti Construction Company).

4. These appeals were filed reiterating that, against the above backdrop, the insurance company should have been exonerated rather than burdened with the liability to pay. At the hearing, it is also submitted that there was contributory negligence on the part of the car driver in that the collision was head-on. The insurer also questions the award of compensation in favour of Pinki Uppal on the ground that her disability was not strictly proved as no doctor was examined.

5. Having heard the learned counsel for the appellant, this court finds no substance in any of the above-mentioned contentions. The plea of contributory negligence cannot now be raised at the stage of appeal as no such theory was pressed during the inquiry before the tribunal, there being no evidence adduced by the insurer to substantiate that the car driver had come in the wrong lane nor was any effort made to implead the car driver as a party to the claim petitions. Hence the said plea is rejected

6. The tribunal, it is noted, has accepted the evidence about the disability, *inter alia*, on the word of the claimant and witnesses

examined on her behalf as indeed the disability certificate (Ex.PW-4/A) the genuineness of which was never questioned.

7. The recovery rights having been granted, the interest of the insurer has been duly protected. The third party interest cannot be allowed to be defeated by granting total exoneration.

8. The appeals are, thus, dismissed.

9. In terms of interim orders passed on 17.11.2011 in these appeals, the insurance had been directed to deposit the entire awarded amounts, some portion whereof was permitted to be released to Pinki Uppal (first respondent in MAC Appeal No1009/2011). The balance lying in deposit in each case shall now be released in favour of the respective claimants in terms of the impugned judgment.

10. The statutory amounts shall be refunded.

11. This disposes of the three appeals.

NOVEMBER 06, 2017

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R.K.GAUBA, J.