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

Decided on: 5th July, 2017

\+ MAC APPEAL 1110/2012

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Priyadarsi Acharya, Adv.

versus

RATTAN SINGH & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. By judgment dated 19.02.2011, on the file of accident claim case (Suit No. 744/2010/1999) instituted by first and second respondents (collectively the claimants), the motor accident claims tribunal (tribunal) awarded compensation in the sum of Rs. 2,07,125/- with interest on account of death of Premwati in motor vehicular accident that occurred on 31.12.1998 involving negligent driving of truck bearing No DL 1GA 2101 (the truck) holding, amongst others, the appellant- insurance company (insurer) liable calling it upon to pay.

2. The insurance company has come up in appeal raising grievance that the insurance policy against third party risk had been issued by it in favour of Jasbir Singh, the then owner of the truck, he having been

impleaded before the tribunal as first respondent but on his request, he having been deleted from the array by order dated 08.07.2008, in view of the fact that truck had been sold by him prior to the accident in favour of one Amrik Singh (third respondent herein), the vehicle having been driven by Bhupinder Singh (the first respondent herein) he also having been added to the fray by subsequent amendment to the claim petition. The prime contention of the appellant insurance company is that the vehicle having been sold off by the insured, he (the owner) not being a party to the claim proceedings, it had no liability to indemnify.

3. Inspite of due service, the respondents have failed to appear.

4. Arguments have been heard, the record perused. It is clear from the tribunal's record that the person insured i.e. Jasbir Singh, son of Rajinder Singh was deleted from the array by order dated 08.07.2008. While it is true that the tribunal while rendering the judgment on 19.02.2011 was under the impression that Jasbir Singh, the insured, had been deleted from the array, which fact is mentioned not only in the cause title but also in (para 3 of) the impugned judgment, a perusal of the tribunal's record shows that there was no such order deleting Jasbir Singh from the fray. It does appear that Jasbir Singh in his written statement had taken the position that he had transferred the vehicle in favour of Amrik Singh on 14.12.1998 by sale and, therefore, he was not liable with regard to the accident that had occurred on 31.12.1998. Amrik Singh who had been impleaded as third respondent, in his written statement admitted having purchased the vehicle from Jasbir Singh, he pegging the said transaction to

11.10.1998 though confirming that the vehicle stood transferred in his name on 14.12.1998. If it were so, Jasbir Singh was neither the owner nor responsible for the use of the vehicle on the date of the accident.

5. Thus, notwithstanding the fact that there is no formal order deleting Jasbir Singh from the array of parties, there being no liability in his respect, the insurance company which had issued the third party insurance risk also cannot be called upon to indemnify. In this regard, reference needs to be made, *inter alia,* to Section 157 of the Motor Vehicles Act, 1988. After having purchased the vehicle, Amrik Singh is not shown to have taken any steps to have the policy transferred in his name.

6. Thus, the appeal of the New India Assurance Company Ltd. is allowed. The directions in the impugned judgment fastening the liability on it to pay compensation awarded in favour of the claimants are set aside.

7. By order dated 15.10.2012, the insurance company had been directed to deposit the awarded amount with UCO Bank, Delhi High Court Branch in the name of the claimants, such amount to be kept in fixed deposit receipt. By order dated 11.09.2013, 80% of the said amount with proportionate interest was allowed to be released to the claimants.

8. The balance lying in fixed deposit receipt shall be refunded to the New India Assurance Company Ltd. (appellant) forthwith. It will be entitled to recover the amount paid in terms of the interim orders of this Court (in appeal) from Amrik Singh or Bhupinder Singh (third

and fourth respondents herein), by appropriate proceedings to be taken out before the tribunal.

9. Statutory deposit, if deposited, shall be refunded.

R.K.GAUBA, J.

JULY 05, 2017
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