$~R-415 to 417

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

Decided on: 6th November, 2017

\+ MAC.APP. 1031/2011

RAGHUBAR DAYAL ..... Appellant

Through: Mr. Pankaj Vivek & Mr. Anurag, Advs.

versus

NEW INDIA INSURANCE CO. LTD & ORS...... Respondents

Through: Mr. Pankaj Seth, Adv. for R-1.

\+ MAC.APP. 1033/2011

RAGHUBAR DAYAL ..... Appellant

Through: Mr. Pankaj Vivek & Mr. Anurag, Advs.

versus

NEW INDIA INSURANCE CO. LTD & ORS...... Respondents

Through: Mr. Pankaj Seth, Adv. for R-1.

\+ MAC.APP. 1034/2011

RAGHUBAR DAYAL ..... Appellant

Through: Mr. Pankaj Vivek & Mr. Anurag, Advs.

versus

NEW INDIA INSURANCE CO. LTD & ORS...... Respondents

Through: Mr. Pankaj Seth, Adv. for R-1.

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

JUDGMENT (ORAL)

1. On 24.05.1996, a motor vehicular accident occurred, it involving two vehicles, one being two wheeler scooter no. DNI 8655 (the scooter) and the other truck bearing registration no. DHG 92 (the truck). The scooter was driven at the relevant point of time by Mukesh Khanna with his mother Satya Khanna sitting on the pillion. The collision resulted in death of Mukesh Khanna and grievous injuries being suffered by Satya Khana. Three accident claim cases were instituted, they including 270/2004, 272/2004 and 271/2004, the first by the wife and daughter of Mukesh Khanna, impleading the mother Satya Khanna as a proforma respondent; the second by the mother Satya Khanna impleading the wife and daughter of the deceased Mukesh Khanna as proforma respondents; and, the third, by Satya Khanna seeking compensation for her injuries. In each case Ashok Singh (a respondent) was impleaded as a party, he being described as the driver of the truck who was negligent. In addition, Subhash Chander and New India Assurance Company Ltd. were impleaded as party respondents on the averments that they were the registered owner and insurer of the truck respectively.

2. The respondent Ashok Singh in the claim cases, contested by filing a written statement denying any fault on his part. Subhash Chander, the respondent described in the proceedings as the registered owner of the truck would not appear and, thus, was set *ex-parte*. The

insurer, by its written statement, admitted the issuance of an insurance policy covering third party risk for the period in question in the name of Subhash Chander but took up the plea of breach of the terms and conditions of the insurance policy on the ground that the driver was not holding a valid or effective driving licence at the time of the accident.

3. The tribunal held inquiry by clubbing all the three cases and granted compensation on account of death of Mukesh Khanna, as also for injuries suffered by Satya Khanna, fastening the liability to pay the said amounts to the claimants on the insurer.

4. During the course of inquiry, the insurer had led evidence in an effort to prove that it was not liable. Such evidence included the deposition of Raghubar Dayal (the appellant herein), he having been summoned and examined as a witness (R3W1) to prove that it was he who had taken the truck on *superdari* after it had been seized during investigation of the corresponding criminal case. The insurance company also examined SI Rameshwar (R3W4) who was the investigating police officer in FIR No. 293/1996 under Sections 279/304A of Indian Penal Code, 1860 (IPC) of police station Karol Bagh to prove, amongst others, the fact of release of the truck to the appellant (R3W1) on *superdari.* Reliance was also placed on the testimony of Mohd Ghaush (R3W5), an official from the office of Regional Transport Office, Govt. of NCT of Delhi such testimony indicating (vide Ex.R3W5/A) that the truck is registered in the name of the appellant.

5. On the basis of above material, the tribunal while calling upon the insurance company to pay the compensation to the claimants gave it "*liberty to seek recovery rights against the owner Raghubar Dayal S/o Moti Lal, with interest*."

6. These appeals were filed primarily contending that the procedure adopted by the tribunal was incorrect and in violation of the rules of natural justice for the reason the appellant was not even impleaded as a party respondent to the claim cases, he also raising the plea of denial of any liability or connection with the vehicle in question.

7. Having heard the learned counsel for the appellant and for the insurance company, this Court is of the opinion that the appeals must be allowed. But, the issue being of import cannot be sidelined and would need further and proper inquiry, this for the simple reason that liability could not have been fastened in the manner done by the tribunal without the appellant being impleaded as a party to the claim cases and without he being called upon to respond by way of appropriate pleadings or being given the opportunity to lead evidence in rebuttal.

8. It will, however, be unfair and unjust towards the claimants to reopen the inquiry into their claims, the liability in which regard has been correctly placed initially at the door of the insurance company. Therefore, the appeals are allowed with the direction that the issue as to whether the appellant was the owner of the vehicle in question and as to whether the compensation paid by the insurance company can be recovered from him in the aforesaid claim cases, is remitted to the

tribunal for appropriate adjudication against the backdrop noted above. It will be proper that the insurance company first files its pleadings qua the appellant in the form of statement of claim for recovery to which the appellant will be liable to respond by his own pleadings in answer, followed by framing of issues, if any, and opportunity to lead evidence to both sides.

9. The appellant and the insurer are, thus, directed to appear before the tribunal for further proceedings in accordance with law on 6th December, 2017. In case so required, the tribunal will consider impleadment of any other party for further inquiry that has been ordered as above.

10. The statutory deposits in these appeals made by the appellant shall be made over to the tribunal for being retained in the form of fixed deposit receipts in a nationalized bank initially for a period of six months with provision for auto renewal and applied, in case the liability is fastened on the appellant, towards satisfaction of award. Conversely, such amounts with accrued interest would be liable to be refunded to him in case he is not found to be liable.

11. These appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 06, 2017
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