$~R-669 & 669A

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

Decided on: 8th December, 2017

\+ MAC. APP. 1217/2012 & CM Nos.19722-19723/2012

ANITA BHANDARI & ANR. ..... Appellant
Through: Nemo.

versus

MADHU MONGA & ORS. ..... Respondents
Through: Ms. Kavit Tyagi, Adv. with
Mr. Navneet Goyal, Adv. for R-1.
Ms. Suman Bagga, Adv. with
Ms. Anjali Chawla for R-2.

\+ MAC. APP. 134/2013 & CM No.1390/2013

ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED ..... Appellant
Through: Ms. Suman Bagga, Advocate

versus

MADHU MONGA & ORS. ..... Respondents
Through: Ms. Kavit Tyagi, Adv. with
Mr. Navneet Goyal, Adv. for R-1.

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

JUDGMENT (ORAL)

1. Madhu Monga (first respondents in these appeals), hereinafter referred to as "the claimant", had instituted accident claim case (MACT No.1141/10/08) on 25.07.2008, seeking compensation under

Sections 166 and 140 of the Motor Vehicles Act, 1988 on the averments that while riding on the cycle rickshaw she had suffered injuries on 02.06.2008, due to collision involving negligent driving of car bearing registration No.DL-3CM-3193 (the car), driven by Anita Bhandari (the first appellant in MAC APP.1217/2012 and the second respondent in MAC APP.134/2013), hereinafter referred to as "the driver". The car was concededly registered in the name of her husband Col. S.K. Bhandari (the owner), second appellant in MAC APP. 1217/2012, respondent in other appeal, and was admittedly insured against third party risk for the period in question with ICICI Lombard General Insurance Company Limited (insurer) (appellant in MAC APP.134/2013 and the second respondent in MAC APP.1217/2012). The tribunal held inquiry and, by judgment dated 28.08.2012, accepted the said claim for compensation holding the said driver responsible for the accident. It awarded compensation in the total sum of Rs.5,63,066/-, fastening the liability to pay on the insurer with interest @ 12% per annum, adding that in case of default in payment within thirty days, rate of interest would stand enhanced to 18% per annum

2. The driver and owner of the car by their appeal (MAC APP.1217/2012), question the finding on the issue of involvement of the car and negligence on the part of its driver, submitting that it was unfounded. The insurer presses its appeal (MAC APP.134/2013) only to submit that the rate of interest levied is high and that levy of the enhanced rate of interest in case of default was uncalled for.

3. These appeals were put in the list of *'Regulars'* to come up on their own turn. When they are taken up for hearing, appellants in MAC APP.1217/2012 and respondents in the connected appeal have failed to appear to assist. The counsel for the claimant and the insurer have been heard and with their assistance the record has been perused.

4. It is noted that the claimant had explained the sequence of events leading to the accident by her own evidence, she having appeared as PW-1 on the strength of her affidavit (Ex.PW-1/A). She spoke about the negligent manner in which the car had come and hit against the cycle rickshaw leading to it turning turtle resulting in she suffering injuries. *Per contra,* the first appellant (in MAC APP.1217/2012) appeared as witness in the defence (R1W1) on the basis of her affidavit (Ex.R1W1/A), she also relying on the evidence of Nirankar Sangwan (R1W2), ASI Madan Lal (R1W3) and Leela Kakaria (R1W4).

5. Having considered the aforesaid depositions, this court finds no good reason to interfere in the finding on the issue of involvement of the car or the negligence on the part its car driver. The witness R1W1 denied any collision, her explanation being that she had only tried to assist the injured claimant in being shifted for medical aid. Reliance on the testimony of R1W4 does not give much aid to her in as much as, it is clear from the evidence that the said witness would have come on the scene only after the collision had taken place. It may be that the driver of the car had helped the claimant in receiving medical aid. But then, that was part of the duty of the motorist under the law. The

findings on the preponderance of probabilities are found to be appropriate and, therefore, affirmed.

6. The insurer's plea about the rate of interest must be accepted. There is no special reason set out for levy of higher rate of interest. It is, thus, reduced to nine per cent (9%) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]. There was no justification either for any default rate of interest to be added. The directions in that regard are set aside.

7. Thus, the appeal (MAC APP.1217/2012) is dismissed, while MAC APP.134/2013 is partly allowed as above.

8. The statutory deposits shall be refunded to the appellant in each case.

9. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 08, 2017
vk