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

\+ MAC.APP. 939/2014 & CM No.17320/2014 & 40417/2017

KRISHAN ..... Appellant

Through: Mr. Kamal Deep, Adv.

versus

M/S ORIENTAL INSURANCE CO.LTD ..... Respondent

Through: Mr. S.P. Jain, Ms. Amandeep Kaur and Mr. Abhijit Chakravarty, Advs. for R1.
Mr. Arun Srivastava and Mr. Keshav Sharma, Advs. for R3 to R13.
Ms. Suman Bagga, Adv. as amicus curiae.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

<u>O R D E R</u>

% 13.12.2017

1. The appellant has challenged the award of the Claims Tribunal whereby the compensation of Rs.3,52,700/- has been awarded to respondents No.3 to 6 and Rs.2,22,833/- has been awarded to respondents No.7 to 13.

2. On 26th May, 2010, Tribhuwan Chand and Beena were travelling in Tata Tempo bearing No. DL-1LG-7938 while going from Delhi to Haridwar along with goods for the purpose of holding a *Bhandara*. The aforesaid vehicle met with an accident near Jatholi Gate, Meerut bypass on 27th May, 2010 at about 01:30 AM which resulted in the death of Tribhuwan Chand and Beena. The legal representatives of both the deceased persons filed two separate claim petitions for claiming compensation against driver, owner and insurance company of Tata Tempo.

3. Respondent No.1 contested the claims on the ground that the deceased were gratuitous passengers and, therefore, the insurance company is not liable to pay the compensation. The Claims Tribunal awarded compensation of Rs.3,52,700/- to respondents No.3 to 6 in respect of the death of Tribhuwan Chand and Rs.2,22,833/- has been awarded to legal representatives of Beena. The Claims Tribunal exonerated the Oriental Insurance Company Limited and held the appellant (owner) of the Tata Tempo liable to pay the compensation.

4. Learned counsel for the appellant urged at the time of hearing that the deceased persons were not gratuitous passengers and they were travelling in Tata tempo along with their goods. Without prejudice, it is submitted that even if the deceased persons were gratuitous persons, the law is well settled that the insurance company is liable to pay the compensation to the claimants in the first instance and they can claim recovery rights against the owner. It is submitted that the award of the Claims Tribunal is in complete violation of the well settled law.

5. Ms. Suman Bagga, learned amicus curiae submits that the law is well settled that the insurance company has primary liability to pay compensation to the legal representatives of the gratuitous passengers in the first instance with a right to claim recovery rights. She further submitted that the owner of the goods travelling with the goods would not be treated as gratuitous passengers.

6. Learned counsel for respondent No.1 submits that the deceased persons were gratuitous passengers. It is submitted that R3W1, driver of the offending vehicle was cross-examined by the insurance company who stated that the deceased were carried to Haridwar with the consideration to fill the diesel of Rs.500/- and this witness was not cross-examined by the claimants and the owner of the vehicle.

7. Learned counsel for the claimants submits that the deceased were not gratuitous passengers. It is further submitted that the claimants are seeking enhancement of the compensation awarded by the Claims Tribunal.

8. Learned counsel for the appellant submits that the appellant has filed an application seeking permission to lead additional evidence to prove that the deceased persons were travelling with their own goods and have paid the consideration for travelling and were not gratuitous passengers.

9. Learned counsel for the claimants submits that the claimants also seek permission to lead additional evidence as well as permission to cross-examine R3W1, driver of the offending vehicle.

10. In the facts and circumstances of this case, the appeal is partially allowed, the impugned awards are set aside and the matters are remanded back to the Claims Tribunal. The parties are permitted to lead additional evidence. The Claims Tribunal shall pass a fresh award after the additional evidence is led by the parties. The appellant has deposited Rs.2,00,000/- with the Registrar General of this Court in terms of the order dated 17th October, 2014 out of which Rs.75,000/- has been released to respondent No.3 and Rs.75,000/- has been released to respondent No.7 and the balance amount is lying in fixed deposit. The Registrar General is directed to release the balance amount to respondents No.3 and 7 in equal shares. The amount of Rs.2,00,000/- deposited by the appellant and released to the claimants shall be adjusted by the Claims Tribunal in final award that would be passed by the Claims Tribunal after recording of the evidence.

11. The parties shall appear before the Claims Tribunal on 17th January, 2018 when the Claims Tribunal shall fix the case for recording of the additional evidence of the claimants and thereafter, additional evidence of the appellant before this Court. The Claims Tribunal shall also afford an opportunity to respondent No.1 to rebut the evidence to be led by the parties.

The Claims Tribunal shall pass a fresh award after the additional evidence. The Claims Tribunal shall also adjudicate the claimant's claim for enhancement of the compensation amount. The Claims Tribunal shall adjust Rs.2,00,000/- deposited by appellant with this Court and pass appropriate order with respect to the said amount.

12. Considering that this case relates to an accident dated 27th May, 2010, the Claims Tribunal shall expedite the matter and endeavour to pass a fresh award within a period of six months from today. Learned counsels for the parties submit that they will appear before the Claims Tribunal on the date fixed and they waive the requirement of any further notice to them.

13. The records of the Claims Tribunal be returned bank forthwith.

14. The statutory amount of Rs.25,000/- be refunded back to the appellant.

15. Copy of this order be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

DECEMBER 13, 2017
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