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

Decided on: 19th July, 2017

\+ MAC.APP. 55/2014

MRS RAJWATI NAGAR & ORS ..... Appellants

Through: Mr. Manish Sharma, Mr. Sanjeev Sharma and Ms. Sonia Khandelwal, Advocates

versus

MR R R TYAGI & ORS ..... Respondents

Through: Mr. Mr. Lalit Kumar Dhingra, for R-3

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

JUDGMENT (ORAL)

1. Swadesh Chand Nagar, 21 years old, student of the degree course of Bachelor of Technology died on account of injuries suffered in a motor vehicular accident that occurred on 20.08.2004 at about 8.30 p.m. statedly due to the rash driving of a bus bearing no.UP-14T-9882, the first respondent R.R. Tyagi being the driver of the said vehicle, it being a vehicle registered in the name of second respondent Naresh Chand Sisodia.

2. The mother and siblings of the deceased instituted accident claim case (petition no.701/10) on 18.01.2010. It may be mentioned here that Roop Chand Nagar, the father of the deceased was at one stage impleaded as additional petitioner (petitioner no.1A) though later transposed as fourth respondent (proforma party).

3. In the claim petition, averments were made that the accident had occurred due to negligent driving of the bus by the first respondent. It was also mentioned in para 17 that the bus was insured with Oriental Insurance Company Ltd., Oriental House, Ansari Road, New Delhi-110 002, it having been impleaded as third respondent, though it must be added that no particulars of the insurance policy or cover were indicated in the pleadings.

4. The first and second respondents (i.e. the driver and owner), inspite of notice, did not appear and chose to suffer the proceedings *ex-parte*.

5. The third respondent (insurer) contested by filing written statement submitted in June 2010 taking the position that the bus was not insured with it, and that the cover note no.574977 dated 01.09.2003, copy whereof had been submitted with the petition, was a forged and fabricated document.

6. The tribunal put the claim to inquiry. By judgment dated 24.09.2013, the case of the claimants for compensation on the principle of fault liability was upheld, the finding in which regard have attained finality, the same having not been challenged.

7. By the impugned judgment, the tribunal awarded total compensation in the sum of Rs.20,85,000/-. It accepted the evidence

led by the third respondent to return a finding that the cover note relied upon, it being document (Ex. PW1/8) which was tendered by the first appellant during her testimony (as PW1), was forged and fabricated since the evidence adduced through Vikram Singh (R3W1), Administrative officer of the third respondent, showed it related to another insurance policy taken out in respect of a Maruti Car bearing no.DNC 0450 (vide Ex. R3W1/A). On the basis of this finding, the insurance company / third respondent was exonerated, the liability being fastened against the first and second respondents.

8. The appellants have come up with the appeal at hand and press it on two grounds, the first concerning their grievance that the non-pecuniary damages as awarded are inadequate and the second that instead of being exonerated, the insurance company should have been burdened with the liability to pay and thereafter given the liberty to recover it from the first and second respondents.

9. The first and second respondents, inspite of service, have not appeared even at the stage of appeal.

10. The contention about inadequacy of the award on non-pecuniary damages must be accepted. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award on account of loss of love and affection is increased to Rs.1 Lakh and the award on account of loss to estate is increased to Rs.25,000/-. This would result in net increase of Rs.90,000/-. Thus, the total compensation awarded in the case will be (Rs.20,85,000/- +

Rs.90,000/-) Rs.21,75,000/-. Needless to add, it shall carry interest as levied by the tribunal.

11. The apportionment in favour of the father (fourth respondent) and other claimants as ordered by the tribunal being adequate, the entire enhanced portion shall go to the first appellant with corresponding interest.

12. The other contention, based on cover note (Ex.PW1/8), cannot be accepted. As noted earlier, the claim petition had not mentioned the particulars of the cover note. The insurance company had put the claimants to notice by its averments in the written statement that the document they were relying on was forged and fabricated. Yet the first appellant, while appearing as PW-1, tendered the said document. The evidence led thereafter by the insurance company has brought home the fact that it was a forged and fabricated document. Unless it could be shown that such copy had been issued by or on behalf of the insurance company, no benefit thereof can be availed by the appellants vis-à-vis the insurance company. The insurance company not having issued any such policy, the claim based on the document apparently fabricated elsewhere cannot result in any liability being fastened upon it.

13. The finding of the tribunal exonerating the third respondent, therefore, is upheld. The claimants are at liberty to take out execution proceedings against the first and second respondents to recover the awarded compensation with interest.

14. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 19, 2017/yg