

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

Date of Decision: March 15, 2017

+ **MAC.APP. 783/2016 & C.M.35831/2016**

RAJIV KUMAR & ANR Appellants

Through: Mr. Alok Bhachawat and Ms.
Tavishi Chandra, Advocates

Versus

DEVENDRA SINGH @ CHOTE & ANR (M/S
CHOLAMANDALAM GENERAL INSURANCE CO LTD)

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
respondent No.1
Ms. Suman Bagga, Advocate for
respondent No.2

+ **MAC.APP. 791/2016**

RAJIV KUMAR & ANR Appellants

Through: Mr. Alok Bhachawat and Ms.
Tavishi Chandra, Advocates

Versus

BUDHPAL SINGH & ANR (M/S CHOLAMANDALAM
GENERAL INSURANCE CO LTD) Respondents

Through: Mr. S.N. Parashar, Advocate for
respondent No.1
Ms. Suman Bagga, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The above captioned two appeals are directed against common

impugned Award of 8th July, 2016 which grants compensation of ₹9,42,000/- with interest @ 9% p.a. to respondent-claimant-*Devendra Singh @ Chote* in the above captioned first appeal and compensation of ₹4,86,000/- at the same rate of interest to respondent-claimant-*Budhpal* in the above captioned second appeal in respect of injuries sustained by them in a road accident on 4th July, 2011.

Appellants in these two appeals are driver and owner of Eicher Canter which had collided with the dumper and an Indica car and they are aggrieved by impugned award which puts the liability upon appellants to pay the awarded amount while absolving respondent-Insurer by holding that respondent-Injured persons were gratuitous passengers in the Eicher Canter in question. Factual background already stands noticed in the impugned Award and so needs no reproduction. Suffice to note that apart from the evidence of Injured-*Budhpal* and *Devendra Singh @ Chote*, there is evidence of appellant-*Rajiv Kumar*, Investigating Officer (PW4) and of *Sukhram (R2W1)* under whose control the Eicher Canter in question was plying. On the basis of evidence led, learned Motor Accident Claims Tribunal (*hereinafter referred to as 'Tribunal'*) has rendered the impugned Award.

On the request of learned counsel for the parties, both the appeals have been taken up together for final hearing and by this common judgment, these appeals are being decided.

Challenge to impugned Award in these two appeals by learned counsel for appellant-driver and owner of Canter in question is on the ground that so-called contradictions in the amount of fare charged by

appellants for carrying the goods of Injured is not borne out from the evidence on record, as the fare payable by injured persons was ₹200 each. It is pointed out by the appellants' counsel that learned Tribunal has erred in holding that it is not possible to carry goods weighing about 70kgs as three persons were there to carry the goods and they had carried it upto 100 meters only. Regarding evidence of Investigating Officer (PW4) about there being no goods in Canter in question, it is submitted by appellants' counsel that the Investigating Officer had reached the spot after about 4 hours and non-recovery of goods is inconsequential in vehicular accident cases and so, on this ground Injured persons cannot held to be gratuitous passengers. It is also pointed out by appellants' counsel that reference of non-recovery of goods from the Canter in question in the FIR, is an aspect which is not relevant for deciding the liability to pay the awarded amount.

It is next submitted by appellants' counsel that in a criminal case, it is not material as to whether the lift was taken by the injured with their goods or without their goods. So, it is submitted that non-mentioning of taking lift with goods in a criminal case is inconsequential and that the finer details of a criminal case cannot be made the basis to put the liability on the appellants to pay the awarded amount.

It is pointed out by appellants' counsel that evidence of *Sukhram (R2W1)* regarding goods being there in the Canter in question remains unchallenged and the evidence of this witness regarding removal of goods by public persons cannot be doubted, as learned Tribunal has failed to advert to this aspect emerging in the evidence of *Sukhram (R2W1)*.

Lastly, it is submitted by appellants' counsel that Injured persons cannot be held to be gratuitous passengers and liability to pay the awarded amount cannot be put to appellant as the liability to pay the awarded amount is of respondent-Insurer.

On the other hand, learned counsel for respondent-Insurer supports the impugned Award and points out that contradictions in the evidence of Injured-*Devendra Singh (PW2)* and *Budhpal Singh (PW1)* is that one of them i.e. *Budhpal Singh (PW1)* has stated in his evidence that other goods were already lying in the Canter whereas *Devendra Singh (PW2)* has denied the suggestion in his evidence that the other goods were already lying in the Canter before they boarded it. It is pointed out by learned counsel for respondent-Insurer that injured persons were contract labour and one of them i.e. *Devendra Singh (PW2)* has given the name of contractor as *Vijay Pal* whereas the other injured *Budhpal Singh (PW1)* has given the name of the contractor as *Kishan*.

It is further pointed out by the counsel for respondent-Insurer that as per evidence of Investigating Officer (*PW4*), no goods were found in the Canter in question and it has come in the evidence of this witness that neither of the injured persons had told the Investigating Officer that they were carrying any goods in the Canter in question and so, deposition of Investigating Officer ought to be relied upon and not of *Sukhram (R2W1)* who was not present at the time of accident. Insurer's counsel submits that evidence of Investigating Officer (*PW4*) regarding Injured persons taking lift in Canter in question remains unrebutted and so, the Injured have been rightly held to be gratuitous passengers and so these appeals

deserve to be dismissed. Nothing else is urged by either side.

Upon hearing and perusal of impugned Award and evidence on record, I find that the discrepancy *inter se* the evidence of Injured persons and Investigating Officer as noted by the learned Tribunal are not material ones and do not go to root of the matter. It has to be kept in mind that the standard of appreciation of evidence in a criminal case cannot be equated with standard of proof in cases like instant one. What is material in a criminal case is the manner of taking place of accident and not whether the injured persons were travelling with goods or not. So, the evidence of Investigating Officer (PW4) does not justify discarding of evidence of Injured persons whose deposition has been scrutinized by this Court and thereupon it is found that their deposition is plausible. It is not beyond comprehension that three persons can carry 70 kgs. of weight. The police/Investigating Officer had reached the spot after many hours of the accident and so it is not unusual that the goods lying in the Canter are pilfered. So, non-recovery of goods of Injured persons, would not justify the conclusion that Injured persons were gratuitous passengers in the Canter in question. Merely because there is contradiction in the name of contractor who had employed the Injured persons, would not diminish the evidentiary value of the version put forth by Injured persons.

The discrepancies in the evidence as noted by learned Tribunal and highlighted by learned counsel for respondent-Insurer are not sufficient to cause any dent in the evidence of Injured persons which receives ample corroboration from the evidence of *Sukhram (R2W1)*. It is not expected that Injured persons would inform Investigating Officer about the fare

being charged by appellant-driver for carrying the goods and thus, so-called discrepancy in the amount of fare is not material. In the considered opinion of this Court, there is no valid basis to discard the evidence of Injured persons and to hold that they were gratuitous passengers. Learned Tribunal has erred in doing so.

In light of the aforesaid, impugned Award is modified on the liability aspect. The direction issued by learned Tribunal to appellants to pay the awarded compensation is set aside and impugned Award is modified to the extent that the liability to pay the awarded compensation would be of respondent-Insurer and not of appellants. Respondent-Insurer is granted six weeks time to deposit the awarded compensation with stipulated rate of interest as per impugned Award with learned Tribunal who shall disburse it to respondent-claimant in the manner indicated in the impugned Award.

With the aforesaid modification, both these appeals and the applications are disposed of.

(SUNIL GAUR)
JUDGE

MARCH 10, 2017

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