

\$~14

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

Decided on: 6th September, 2017

+ **MAC APPEAL No. 794/2016 & CM Nos. 36535-36/2016**

VIDYA PANDEY Appellant

Through: Mr. Amit Sharma, Adv.

versus

MOHD. NOOR HASSAN & ORS. Respondents

Through: Mr. N.K. Jha, Adv. for R-2.

Mr. Pankaj Seth &

Mr. Shoumik Mazumdar, Adv.
for R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 11.09.2011, Mohd. Kalam was travelling in a motor vehicle described as Gramin Sewa bearing registration no. DL 2W 0479 (described in the proceedings as offending vehicle) when it met with an accident at about 10.45 a.m. resulting in he falling off on the road sustaining head injuries which resulted in his death. A criminal case vide first information report 224/2011 for offences under Sections 279/304A of Indian Penal Code, 1860 (IPC) was registered by police station Begumpur in this regard on the statement of constable Vijay Chaudhary who was present at the scene on beat duty. The first and second respondents (collectively, the claimants), being the parents of the deceased, instituted accident claim case (MACT case no.

520/13/11) in the wake of detailed accident report (DAR) that was submitted by the local police. In the said proceedings, besides Dharendra Kumar Mishra (first respondent), he being the driver of the offending vehicle, the appellant herein was also impleaded, she concededly and correctly described as the registered owner of the vehicle, this in addition to United India Insurance Company Ltd. (fourth respondent), it admittedly having issued an insurance policy covering third party risk for the period in question.

2. On the conclusion of the inquiry, the tribunal, by judgment dated 08.07.2015, upheld the case for compensation on the basis of finding returned, on the basis of evidence of Constable Vijay Chaudhary (PW-2), about the accident having been caused due to negligent driving of the offending vehicle by the third respondent (driver). The insurance company had taken the plea that it was not liable since the deceased was on board the offending vehicle as a conductor. The pleadings on record and the testimony of PW-2 confirm this fact and on such basis the insurance company was exonerated of any responsibility. The liability to pay compensation has been fastened jointly and severally against the third respondent (the driver) and the appellant (the registered owner).

3. The appellant assails the judgment of the tribunal by the appeal at hand primarily raising the issue that she was denied the opportunity to participate in the proceedings before the tribunal and, therefore, the judgment has been passed *ex-parte*. It is the contention of the appellant that the deceased was in the offending vehicle at the relevant point of time not as a conductor or employee but as a passenger and

that the finding contrary to this position returned by the tribunal is unfounded.

4. The tribunal's record would show that the appellant had appeared before the tribunal on 13.12.2011 by which date the claim petition had already been submitted in the wake of the DAR that had been presented earlier by the police. The proceedings recorded by the tribunal from 13.12.2011 onwards would show that the appellant continued to be represented before the tribunal through counsel jointly engaged by her with the driver, both having filed joint written statement dated 24.01.2012. On the basis of pleadings, issues were framed by the tribunal on 28.01.2013 and the matter was adjourned for the evidence of the claimants to be recorded on 26.08.2013. On the said date, *i.e.* 26.08.2013, the presiding officer of the tribunal was on leave and the Reader, pursuant to administrative orders issued by this Court on 15.04.2013 followed by administrative orders issued by District and Sessions Judge (North) on 25.04.2013, made over the claim case to another tribunal for the said date itself. The proceedings dated 26.08.2013, confirm that the parties were duly represented through their respective counsel and that they had been instructed to appear before the transferee court at 2.00 p.m. on the same date. The proceedings recorded on 26.08.2013 later by the transferee court, however, show that neither the appellant nor the driver appeared there. The subsequent proceedings right till the impugned judgment being passed confirm that post the transfer of the case, the appellant would not appear or participate.

5. It is the contention of the appellant that while making over the case to another forum, the transferor should have fixed another specific date for appearance and that since this was not done, there being no court notice issued, the procedure applied was in breach of para 6 of the instructions contained in Chapter 13 of Part C of Volume I of High Court Rules and Orders, there has been denial of effective opportunity.

6. The above contention must be rejected for the simple reason that in the proceedings whereby the case was made over, the parties had been instructed to appear before the transferee tribunal on the same date, even time having been specified for such appearance as 2.00 p.m. The fact that the other parties did appear before the transferee tribunal in terms of the said instructions confirms that there was due notice of the transfer and the instructions for the parties to appear had been properly communicated. The default on the part of the appellant cannot be availed of to have the case relegated to the same stage. The contention is, thus, rejected.

7. As regards the other plea, it is noted that the claimants in their petition had specifically pleaded (against volume 9 in part I) that the deceased was on duty as a conductor/helper on the offending vehicle. In the written statement, jointly filed by the appellant with the driver, this plea was not denied, the only denial being of the case of the claimants that the accident had been due to negligent driving. By implication, the case of the appellants that the deceased was on board the offending vehicle at the crucial point of time as a conductor was, thus, admitted. The eye witness (PW-2), the local police official only

confirmed and reinforced this fact by his statement to such effect in during the cross-examination.

8. In above facts and circumstances, the contention of the appellant now pleading facts to the contrary cannot be accepted.

9. For the foregoing reasons, the appeal is found devoid of substance and it with accompanying applications is dismissed.

10. The appellant is bound to satisfy the award which she must do by requisite deposit with the tribunal forthwith.

11. The statutory amount deposited shall be released to the claimants towards part satisfaction of their claim.

SEPTEMBER 06, 2017

nk

R.K.GAUBA, J.