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

Decided on: 7th July, 2017

\+ MAC.APP. 940/2016

SHRI RAM GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

SUNITA DEVI AND ORS ..... Respondents

Through: Mr. K.K. Dubey, Adv. for R-1 to 5.
Mr. S.K. Jha, Adv. for R-7.

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

JUDGMENT (ORAL)

1. The insurance company though admitting the insurance cover in respect of the offending vehicle, it being described as Tata Ace bearing registration No. DL 1LP 8968 disputes the liability fastened upon it claiming that the deceased was gratuitous passenger in goods vehicle and, therefore, it could not have called upon to indemnify, as ordered by the tribunal by the impugned judgment dated 28.07.2016, on the claim petition of first to fifth respondents (claimants), it having been registered as suit No. 201/2015, arising out of the death of Anil Kumar Pandey.

2. The evidence led by the claimants, sought to show that the deceased was accompanying the goods being carried in the offending vehicle at the time of accident. It appears at the time of police investigation in the wake of the accident, no formal seizure of any such goods was made. The tribunal has rejected the contention of the insurance company dealing with the evidence as under:-

> "*32. Deceased is shown to be employed with DTDC Courier Company and his office ID is Ex.PW-1/1. It is sufficiently proved that deceased was working with above-said courier company. Testimony of PW-2 Lakshmi Shankar Upadhyay also shows that deceased was travelling in the offending vehicle alongwith gods of courier company as its representative.*
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> *33. Insurance Company has heavily relied upon the admission of respondent no.2/owner of offending vehicle in his cross-examination that he has no record to show that the goods were being carried in the offending vehicle at the time of accident. It is also admitted by him that there was no goods in the offending vehicle at the time when it was impounded and at the time of its release. The offending vehicle may not have been found to containing goods at the time of impounding, but it does not bely the testimony with the goods of courier company.*
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> *34. It can be easily understood that goods of the courier company would not have been seized since it was not the case property. PW-2 Lakshmi Shankar Upadhyay has stated in his statement in the first instance, on the basis of which FIR was registered, that deceased was travelling in the offending vehicle alongwith goods of the courier company with which he was employed. Facts as narrated by PW-2 Lakshmi Shankar Upadhyay in the first instance have to be believed for there was no reason for him to have wrongly stated that the deceased was travelling with goods. Criminal record and evidence sufficiently proves*

that deceased was travelling in the offending vehicle with the goods as a representative of owner of goods.

35. In the case of Hanuman Gouda vs. United India Insurance Company Ltd. 2014 (1) TAC 723 (SC), identical facts as present case came before the Hon'ble Supreme Court of India. A reference was made accompanying the goods in transit for the purpose of delivery as an authorized representative of the owner of goods. Hence, Insurance Company was liable to pay the compensation.

36. In the present case as well, deceased being an employee/authorised representative of the owner, travelled along with the goods. Hence, Insurance Company is liable to indemnify the insured and pay the compensation to petitioners".

3. This court finds the reason set out to be sound calling for no interference.

4. The appeal is dismissed.

5. The amount of compensation deposited shall be released to the claimants.

6. Statutory deposit shall be refunded.

R.K.GAUBA, J.

JULY 07, 2017
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