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

Decided on: 21st July, 2017

\+ MAC APPEAL No.628/2017

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Ms. Awantika Manohar, Adv.

versus

BEENA DEVI & ORS. ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. Rajiv Sharma was travelling in motor vehicle described as Eicher Canter bearing registration no. DL 1GC 4842 (hereinafter referred to as the vehicle) on 04.08.2016, it statedly being driven by the fourth respondent, it being a vehicle registered in the name of fifth respondent, admittedly insured against third party risk with the appellant insurance company for the period in question. The vehicle had reached in the vicinity of Gurukul Industrial Area of Suruj Kund, Faridabad at about 9 a.m. when the driver suddenly applied brakes, resultant upon which the door on the left side flung upon and the deceased sitting near the said door fell out, his hand in the process of fall coming in contact with an electric wire through which the electrical current was running. He suffered electrocution and was immediately rushed to nearby Asian Hospital, Faridabad where he was

declared brought dead. During the investigation by the police, which had registered a case in this context as FIR No. 508/2016 police station Suraj Kund, Faridabad, Haryana, the dead body of Rajiv Sharma was subjected to post-mortem examination, the opinion of autopsy doctor recorded thereupon being that the death had occurred due to cardiac arrest on account of electric shock which was ante-mortem and sufficient to cause death in the ordinary course of nature.

2. The wife, father and mother of Rajiv Sharma, they being first to third respondents herein (the claimants) instituted accident claim case (MACT 4906/2016), impleading the driver, owner and the appellant insurer as respondents. The claim was contested by the insurer, driver and owner suffering the proceedings *ex-parte* not even filing a written statement. The claim was decided by the Tribunal by judgment dated 19.04.2017 upholding the claim for compensation on the basis of finding that the death had occurred due to negligent driving of the vehicle, the liability having been fastened against the appellant insurance company to pay the compensation.

3. By the appeal at hand, the insurer raises two contentions, the first being that the above facts and circumstances cannot be treated as a case of death on account of negligent driving. Pointedly, the argument is that the post-mortem examination report certified that the death had occurred on account of cardiac arrest due to electric shock. The second contention is that the deceased was apparently moving as gratuitous passenger and, therefore, the insurer has no liability to indemnify.

4. The appeal must be dismissed at the threshold, because both grounds do not appeal to this Court.

5. The plea of gratuitous passenger was concededly not raised as a defence before the Tribunal. This question was not even asked of the claimants nor any effort made to ascertain from the owner or driver who could have been easily summoned their presence being compelled to secure explanation.

6. The submission that this is not a case of death on account of negligent driving is against the evidence which was led. There is clear evidence noted by the Tribunal indicating that the door of the vehicle on the left side where the deceased was sitting at the crucial point of time had suddenly opened while the vehicle was in motion. But for the fact that the driver had suddenly applied brakes even while the vehicle was moving at high speed, this would not have happened, and the fact that the deceased fell out from the moving vehicle itself confirms negligence on the part of the driver. It is only an added circumstance that the deceased unfortunately fell on a live electric wire in the process leading to cardiac arrest.

7. The appeal is dismissed in *limine*.

8. The insurance company is directed to satisfy the award by requisite deposit with the Tribunal within 30 days.

9. The statutory amount shall be refunded after furnishing proof of compliance.

R.K.GAUBA, J.

JULY 21, 2017
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