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

Decided on: 11th August, 2017

+ MAC.APP. 1025/2016 and CM No.45077/2016

THE NATIONAL INSURANCE CO LTD Appellant

Through: Mr. S.P. Jain & Mr. Himanshu
Gambhir, Advocates.

versus

BABY SAPNA SAXENA THR HARIOM

SAXENA & ANR Respondents

Through: Mr. Jitender Kamra, Advocate
for claimants.

+ MAC.APP. 1028/2016 and CM 45083/2016

THE NATIONAL INSURANCE CO LTD Appellant

Through: Mr. S.P. Jain & Mr. Himanshu
Gambhir, Advocates.

versus

MASTER ROHIT SAXENA & ANR Respondents

Through: Mr. Jitender Kamra, Advocate
for claimants.

+ MAC.APP. 1032/2016 and CM 45095/2016

THE NATIONAL INSURANCE CO LTD Appellant

Through: Mr. S.P. Jain & Mr. Himanshu
Gambhir, Advocates.

versus

MASTER RAHUL SAXENA & ANR Respondents

Through: Mr. Jitender Kamra, Advocate
for claimants.

+ MAC.APP. 1030/2016 and CM 45091/2016

THE NATIONAL INSURANCE CO LTD Appellant

Through: Mr. S.P. Jain & Mr. Himanshu
Gambhir, Advocates.

versus

RAJ KUMARI & ORS Respondents

Through: Mr. Jitender Kamra, Advocate
for claimants.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 01.11.2012, five persons were travelling in Alto car bearing registration no. DL 2CAP 1662 of which respondent Yogesh Goyal is the registered owner, the said persons including driver Surender Paswan, son of Chalitra Paswan employed by him. When the car had reached Delhi Muradabad Road, zero point, Manuppura, within the jurisdiction of police station Majhola on Delhi Muradabad road within the jurisdiction of district Muradabad, UP, it was involved in a head-on collision with a truck. The identity of the truck could never be traced as its driver fled away with the vehicle from the scene. The collision resulted in death of car driver Surender Paswan and of Ram Bahadur who was sitting on the front passenger seat next to the driver and injuries to three children, they being Baby Sapna Saxena, Mater Rahul Saxena and Master Rohit Saxena, all of whom were travelling in the car on the rear seat. Four accident claim cases, they being

MACT case nos. 476531, 476227, 476254 and 476532 of 2016 (old numbers 193-6/2013), were filed, one on account of death of Ram Bahadur by his wife and other members of the family dependent upon him, they being first to fifth respondents (collectively, the claimants) in MAC Appeal No. 1030/2016, and the others, for and on behalf of the three minor children who were injured, they being the first respondents in the other connected appeals. All the four claim petitions were directed against the registered owner of the car, Yogesh Goyal, and the appellant insurance company (insurer), it admittedly having issued an insurance policy against third party risk for the period in question in respect of the car, *inter alia*, on the allegations that the car driver deceased Surender Paswan had also been negligent in driving.

2. The tribunal held inquiry and, by judgment dated 19.09.2016, upheld the claim for compensation in each case returning a finding that the car driver was also responsible giving rise to cause of action for claims under Section 166 of the Motor Vehicles Act, 1988. By the said judgment, awards of compensation in each case were determined and the liability was fastened against the insurance company, it being called upon to pay, its plea in defence about the car driver not holding a valid or effective driving licence having been repelled on the basis of evidence of Yogesh Goyal who appeared as R2W1 during the inquiry.

3. These appeals question the maintainability of the petitions on the principle of fault liability and also the correctness of the findings returned to above effect.

4. Having heard the learned counsel for the appellant and having gone through the record of the tribunal, this Court finds no substance in the appeals which are consequently liable to be dismissed.

5. The basic contention urged by the appellant is that the accident having occurred on 01.11.2012, no first information report was immediately lodged and further that Hari Om Saxena, father of the three injured children had lodged a report two days after the occurrence, i.e. on 3.11.2012, with the local police station which resulted in FIR No. 88/2013 being registered, the effect whereof was that the accident had been caused due to negligence on the part of the truck driver, the identity of which was not known. It is the submission of the insurer that the police could not locate the truck driver inspite of investigation and eventually the said FIR resulted in an untraced report being submitted in the court of Magistrate, putting a curtain on such proceedings. It is submitted that the pleadings on the basis of which the present petitions were filed and the evidence to the effect that the driver of the car was also negligent have been manufactured only to extract money.

6. The submissions of the insurance company do not impress this Court. It is trite that FIR is only the starting point of action in terms of criminal law. It is never expected to be a compendium of entire facts on which the criminal charge is expected to be eventually founded. If contrary were the expectation, there would be no need for any investigation. The purpose of the investigation is to find out the truth. If the police, inspite of investigation, is unable to trace out the offending vehicle - the truck in the present case - it does not mean that

there cannot be a case brought out against such other persons whose involvement or complicity can be proved by the evidence which is available.

7. The fact that in the FIR, Hari Om Saxena mentioned negligence on the part of the truck driver obviously was made on the basis of such facts as he could immediately gather. He was a resident of New Delhi. He would have rushed to the area in question where the accident had occurred, his prime and first concern at that stage being to take care of the medical treatment of his children who were seriously wounded. The need for legal action against the offender would be not an immediate priority. Therefore, if there is a deficiency in the information made to the police, the same cannot inhibit him from bringing appropriate legal action on the basis of facts which he gathered later.

8. The evidence of Rohit Saxena, one of the three injured claimants, he having appeared as PW-6 during the inquiry, clearly proved, virtually with no contest, that the two vehicles had collided head-on. In the facts and circumstances, negligence on the part of the drivers of both the vehicles is writ large. The witness had also affirmed on oath that the car driver was also moving at excessive speed. If other vehicles were coming from the opposite side and if traffic in both the directions was moving in the same lane, the driver was expected to take proper precaution and keep the speed of vehicle in check so that the possibility of head-on collision could be avoided. The fact that he was unable to do so itself indicates negligence on his part.

9. Nothing can be read into the closure of the police case as “untraced”. The truck could never be identified and, therefore, its driver could not be prosecuted. The other vehicle was the Alto car, driver whereof had perished in the same accident. In these circumstances, the police had no option but to close the case at its end.

10. The other plea of the insurance company relates to the driving licence. The evidence of the car owner, appearing as R2W1, affirming that he had engaged the driver after testing his skills and capability has been correctly appreciated and accepted as valid explanation. Moreover, the evidence also shows that the driver was holding a temporary licence which affirms that he was not disqualified from driving.

11. In the above view, all the appeals are dismissed.

12. The amounts deposited by the appellant in these appeals in terms of the interim orders shall be released to the respective claimants. The appellant insurance company is directed to satisfy the awards in each case by depositing the balance with the tribunal within thirty days, making it available to be released.

13. The statutory amounts shall be refunded after proof is shown of awards having been satisfied.

R.K.GAUBA, J.

AUGUST 11, 2017

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