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

Decided on: 6th July, 2017

\+ MAC.APP. 200/2009 & CM Nos. 5517/2009, 5519/2009

NUTECH SECURITY PRINTERS ..... Appellant
Through: Mr. Ajay Kohli & Ms. Bhumika Kapoor, Advocates

versus

RAJNI & ORS ..... Respondents
Through: Ms. Neerja Sachdeva, Advocate for R-6.

\+ MAC.APP. 556/2015

NATIONAL INSURANCE COMPANY LTD ..... Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

ASHOK KUMAR & ORS ..... Respondents
Through: Mr. Ajay Kohli & Ms. Bhumika Kapoor, Advocates for R-3.

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

JUDGMENT (ORAL)

1. The first of these appeals arising out of two separate judgments of motor accident claims tribunal (tribunal) relating to same motor vehicular accident bring out facts which reflect how neglect in proper, effective or timely prosecution of the defence by the registered owner

of the vehicle has led to prolonged proceedings in the court which could have been avoided.

2. On 30.07.2005, a motor vehicular accident took place involving two trucks, one being truck bearing no. HR 63 3778 in which the victims were travelling and the other being truck bearing no. HR 38E 8389 (described as the offending vehicle). Rishi Parkash was the driver of the first mentioned vehicle and with him Ashok Kumar and another person were moving as passengers on errand for sale of vegetables. The collision took place at about 10.30 a.m. when the said vehicle had reached near CNG pump on main Kanjhawala Road, Near Mangolpuri, Sector-23, Rohini. The offending vehicle carrying bricks as the cargo is stated to have come in rash or negligent manner, it being driven by Om Prakash (one of the respondents herein), it being the vehicle registered in the name of M/s Nutech Security Printers (appellant in MAC appeal No. 200/2009 and one of the respondents in MAC appeal No. 556/2015).

3. For the sake of convenience, M/s Nutech Security Printers shall hereinafter be referred to as the registered owner.

4. It is admitted that the above said offending vehicle was insured against third party risk for the period in question with National Insurance Company Ltd. (appellant in MAC Appeal No. 556/2015 and one of the respondents in MAC Appeal No. 200/2009).

5. For the sake of convenience, the National Insurance Company Ltd. shall hereinafter be referred to as the insurer.

6. Rishi Parkash, the driver of the first mentioned vehicle died as a consequence of the injuries suffered. His widow and other members

of the dependent family, they being first to fourth respondents in MAC appeal No. 200/2009 (collectively, the claimants in that case) instituted the accident claim case (petition no. 221/2006). The said petition, after inquiry, resulted in judgment dated 18.09.2007 whereby compensation in the sum of Rs. 5,51,770.40 with interest was awarded, the liability being fastened against Om Prakash (the driver) and the registered owner.

7. The insurer had taken the plea that the offending vehicle was not covered by a valid permit for Delhi and that its driver did not hold a valid driving license. The driver or owner failed to put in any contest at that stage and chose to suffer the proceedings *ex-parte*. On the basis of evidence led, and the submissions, its plea was accepted and the insurer stood exonerated. It is primarily this result which gave rise to the registered owner coming with MAC Appeal no. 200/2009 raising various contentions.

8. Pertinent to note here that the pleadings in appeal, as originally presented in the context of the question of valid license and valid permit were very vague.

9. Meanwhile, Ashok Kumar, the other victim of the same accident, he having been injured, filed his own independent case (suit no. 206/2013). In the said case, it appears the registered owner took up the plea that the offending vehicle had been given on lease to Chand Singh, son of late Sh. Jai Lal for a period of 24 months in terms of lease agreement dated 02.09.2003 and that the driver Om Prakash had been engaged by the said Chand Singh, the vehicle being in his

custody and control. The registered owner, thus, denied the liability to pay compensation.

10. Against the said backdrop, Chand Singh, was impleaded as fourth respondent in the claim case of Ashok Kumar. In the course of inquiry into the said case, the registered owner was constrained to approach this Court by CM (M) 400/2010, which was decided by a learned single judge by judgment dated 25.03.2010. The tribunal was directed to examine the issue raised by the registered owner as to who was the real owner of the vehicle on the date the cause of accident had arisen. The tribunal held inquiry and submitted report, it confirming, noticeably, on the basis of admissions of Om Prakash (the driver) and Chand Singh (lessee), that the contentions of the registered owner with reference to the lease agreement are correct. The offending vehicle was actually in the control and possession of Chand Singh, Om Prakash having been engaged by him (the lessee) as a driver for its purposes, he actually being the driver at the relevant point of time.

11. The claim case of Ashok Kumar eventually resulted in judgment dated 11.05.2015 of the tribunal upholding the case of negligent driving of the offending vehicle by Om Prakash being the cause of accident and compensation in the sum of Rs. 8,31,000/- with interest was awarded by the tribunal. The liability was fastened against the insurance company which was directed to pay. The tribunal, however, also added that it could claim recovery of compensation amount from owner or driver "if permissible by law". Suffice it to observe here that the tribunal should not have left the issue to be litigated elsewhere and should have given clear findings on

the contention of insurance company for recovery rights in the same proceedings.

12. By its appeal, MAC Appeal No. 556/2015, the insurer questions the direction to pay, and the issue of recovery rights having been kept open, also raising grievance about the quantum of compensation awarded in favour of Ashok Kumar.

13. The report with regard to the inquiry into the claim based on lease agreement was brought to the notice of this court of which cognizance was duly taken in the proceedings recorded on 21.11.2013 in the appeal of the registered owner against the award in the death case. It is against the said backdrop that Chand Singh, son of late Sh. Jai Lal was impleaded as seventh respondent in such proceedings. Though he was served, he has failed to put in contest in proceedings in both the appeals.

14. Since the questions of permit of the vehicle and driving licence of Om Prakash (the driver of the offending vehicle) have also been bone of contention, that issue needs to be dealt with first. Suffice it to note here that having filed the appeal in April, 2009, a copy of driving license of Om Prakash was submitted (at page 81 of the appeal paper book) on which directions were given to the insurer to verify. The insurer confirmed on 8.10.2009 that the said driving license was genuine. On 18.12.2009, eight months after filing the appeal, the registered owner came with copy of a permit, it purportedly showing to have been issued by State of Haryana and endorsed by the competent authority in Delhi on 24.08.2000 for the period 25th August, 2000 to 23rd August, 2005 which would cover the date of accident

(30.07.2005). Again, the insurer was directed to verify. The report submitted in due course, as taken note of on 08.10.2009 and on 10.08.2010, confirms that there actually existed a valid permit for State of Delhi in respect of the offending vehicle.

15. In above facts and circumstances, the contentions of the insurer seeking to be relieved of its responsibility to indemnify on the grounds of absence of driving license or valid permit no longer survive and are rejected.

16. This leaves one with the third contention, raised in the course of proceedings arising out of claim case of Ashok Kumar before the tribunal and in the proceedings in the death case at the stage of appeal in the wake of report of inquiry into the lease agreement, to the effect that the insurer cannot be held liable since the insured (registered owner) had passed on the control of the offending vehicle to a third person Chand Singh under the lease agreement, the driver also having been engaged by such third person.

17. Before one comes to that issue, the grievances of the insurance company in MAC Appeal No. 556/2015 as to the quantum may be examined.

18. The prime contention raised about the quantum of compensation awarded to Ashok Kumar concerns the addition of element of future prospects, the submission being that there was no sufficient evidence led for such inclusion. This plea only needs to be noted and rejected. The claimant Ashok Kumar had proved by formal evidence that he was in a private employment engaged at a salary of Rs.5,000/-. His employment, per the evidence, was regular, he being

only 21 years old at the time of the accident occurred. His employment would eventually continue and earn him periodic rise in income. In the face of concrete and irrefutable evidence, the inclusion of element of future prospects cannot be grudged.

19. The other submission concerns award of non-pecuniary damages on account of loss of enjoyment of life. Given the fact that the tribunal has found the claimant to have suffered disability to the extent of 10%, the objection to such award must also be repelled.

20. The handing over of the vehicle on lease in the above noted fact situation cannot mean that the insurer can avoid the liability under the policy of insurance taken out by the registered owner. In this context, reference only needs to be made to the decision in *Guru Govekar vs. Miss Filomena F. Lobo & Ors. (1988) 3 SCC 1.* The vehicle in that case was in the custody of a repairer and the insurance company had sought to be relieved of the liability. This contention was rejected, *inter alia,* with the observation that the liability of the insurer continues even where the insured caused or allowed any other person including an independent contractor to use the vehicle in a public place such use having caused death of or injury to the person or damage to property of a third party in an accident giving rise to cause of action to claim compensation, the only exception carved out being in a situation where such other person himself takes out a policy of insurance to cover his liability arising out of such accident.

21. The reliance by the insurer on *Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari & Ors.(1997) 7 SCC 481* and *National Insurance Company Ltd. vs. Deepa Devi & Ors. (2008) 1*

SCC 414 is not correct. In the first case *Rajasthan State Road Transport Corporation* (supra), the liability of the insurance company in such fact-situation as at hand was not even an issue. As pointed out by the counsel for registered owner, the insurance company was made to discharge the liability under the statute. In *Deepa Devi* (supra), both registered and the insurer were relieved of their responsibility as the vehicle had been requisitioned by the State, the owner having, thus, lost entire control over the vehicle.

22. For the foregoing reasons, the appeal of the insurer (MAC Appeal No. 556/2015) in the case of claim of Ashok Kumar is disposed of with observation that it would have no right to recover the amount of compensation to be paid by it to the claimant.

23. The appeal of the registered owner (MAC Appeal No. 200/2009) is allowed. The conclusion of tribunal in the impugned judgment relieving the insurer of its liability is vacated. It is directed that the insurer shall bear the responsibility to pay the compensation with interest thereupon to the claimants in the case of death of Rishi Parkash.

24. In MAC Appeal No. 200/2009, by interim order, the registered owner had been directed to deposit the awarded amount with interest with the tribunal which was permitted to release the same to the claimants. The insurance company is directed to pay the amount paid by the registered owner to the claimants within 30 days by appropriate remittance. In case of default, the registered owner will be entitled to take out appropriate proceedings before the tribunal to recover the amount from the insurer. It is, however, made clear that the liability

of the insurance company to reimburse the amount to the registered owner would be restricted to the amount actually paid and there shall be no entitlement of any interest thereupon provided such liability is discharged within the period specified above. In case of default by the insurer, it shall be liable to pay interest on such amount at the rate of 9% per cent w.e.f. from the end of 30 days granted for reimbursement, till realization.

25. However, given the neglect shown by the registered owner, as brought out above, it is burdened with costs of Rs. one lakh to be paid to the insurance company. This cost shall be adjusted by the insurance company from the amount to be paid by way of reimbursement.

26. In MAC Appeal No. 556/2015, the insurance company had been directed by order dated 17.7.2015 to deposit awarded amount with Registrar General of this Court and for such amount to be put in fixed deposit interest bearing account for a period of one year with UCO Bank, Delhi High Court Branch, New Delhi. The amount lying in deposit shall now be released to the claimants.

27. Statutory amounts in each case shall be refunded.

R.K.GAUBA, J.

JULY 06, 2017
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