

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: October 10, 2017

+

MAC APPEAL No. 967/2015

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Adv.

versus

NEETU VERMA & ORS Respondents

Through: Mr. Ghanshyam Thakur, Adv.
for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The claim petition (MACT No. 1086/2007) instituted on 19.12.2007 by the first and second respondents (collectively, the claimants) sought compensation under the structured formula in terms of Section 163-A of Motor Vehicles Act, 1988 on account of death of Ravinder Kumar in a motor vehicular accident that occurred on 14.05.2007 while he was driving truck bearing registration no. HR-69-4524.

2. The Tribunal after inquiry, by judgment dated 16.09.2015, accepted the above said claim and awarded compensation in the total sum of Rs.4,72,500/- fastening the liability on the appellant which was the insurer of the stationary truck. The background facts as noted in

the impugned judgment reveal that the deceased was driving truck bearing registration No.HR-69-4524 on way from Pathankot to Ludhiana and in the area of Ladowal Chowk, Ludhiana at about 03:45 am his truck rammed into the stationary truck insured with the appellant, the latter vehicle being parked on the road side without caution light.

3. The insurer in its appeal submits that it is inherent in the aforementioned facts that the accident occurred due to the negligence on the part of the deceased himself and, therefore, the liability could not have been fastened against it. Reliance is placed on the decision of a bench of two Hon'ble Judges of the Supreme Court reported as *National Insurance Company Ltd. vs. Sinitha & Others; (2012) 2 SCC 356*. An earlier decision of a bench of three Hon'ble Judges of the Supreme Court reported as *Deepal Girishbhai Soni & Ors. vs. United India Insurance Co. Ltd., Baroda; (2004) 5 SCC 385*, however, has taken a contrary view in the context of claims under Section 163-A of Motor Vehicles Act, 1988 after taking note of the special provision under Section 163-A of Motor Vehicles Act, 1988 ruling (in para 66) that “(Section 163-A of the Act) covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.”

4. In above view the plea of negligence is rejected. The appeal is dismissed.

5. The insurance company had been directed by order dated 11.12.2015 to deposit the entire awarded amount with the Registrar

General of this Court within a specified period as pre-condition to stay against the execution of the award. By subsequent order dated 29.01.2016, 50% of such amount was allowed to be released to the claimants, the balance required to be put in fixed deposit with the Tribunal rather than the Registrar General of this Court. The Tribunal shall now release the balance amount lying in the fixed deposit to the claimants.

6. The statutory amount shall be refunded to the appellant-Insurance Company.

OCTOBER 10, 2017

ak

R.K.GAUBA, J.

