

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

Date of Decision: September 27, 2018

(i)+ MAC.APP. 754/2017

M/S CHADHA BROTHERSAppellant

Through: Mr. S.K.Sharma & Mr. Prayas
Aneja, Advocates

Versus

NEERAJ & ORS. (THE NEW INDIA ASSURANCE CO. LTD)

.....Respondents

Through: Mr. J.P.N. Shahi, Advocate

(ii)+ MAC.APP. 756/2017 & CM 30226/2017

M/S CHADHA BROTHERS THR ITS PROPRIETOR S K
CHADHAAppellant

Through: Mr. S.K.Sharma & Mr. Prayas
Aneja, Advocates

Versus

SHIVRAJ & ORS.Respondents

Through: Mr. J.P.N. Shahi, Advocate

(iii)+ MAC.APP. 762/2017

M/S CHADHA BROTHERS THR ITS PROPRIETOR S K
CHADHAAppellant

Through: Mr. S.K.Sharma & Mr. Prayas
Aneja, Advocates

Versus

POONAM & ORS.

.....Respondents

Through: Mr. J.P.N. Shahi, Advocate

(iv)+ **MAC.APP. 764/2017**

M/S CHADHA BROTHERS THR ITS PROPRIETOR S K
CHADHA

.....Appellant

Through: Mr. S.K.Sharma & Mr. Prayas
Aneja, Advocates

Versus

NISHA & ORS.

.....Respondents

Through: Mr. J.P.N. Shahi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned four appeals relate to a vehicular accident which took place on 20th May, 2011 in which *Deepak* and *Rameshwar* had sustained fatal injuries while *Neeraj* and *Shivraj* had suffered grievous injuries. Vide separate Awards of even date i.e. 11th May, 2017, compensation has been granted to the respondents-Claimants and Injured by the *Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal")*.
2. With the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being decided by this common judgment.

3. In the above captioned first appeal, the challenge is to impugned Award, vide which the Tribunal has granted compensation of ₹1,57,931/- with interest @ 9% p.a. to respondent/Injured-*Neeraj* on account of grievous injury sustained by him in this vehicular accident. In the above captioned second appeal, the challenge is to grant of compensation of ₹76,993/- with interest @ 9% p.a. by the Tribunal to respondent/Injured-*Shivraj* on account of the injuries sustained by him in this accident. The above captioned third appeal questions impugned Award vide which compensation of ₹13,61,944/- with interest @ 9% p.a. has been granted by the Tribunal to legal heirs of *Deepak* on account of fatal injuries sustained by him in this vehicular accident. In the above captioned fourth appeal, the challenge is to grant compensation of ₹11,59,768/- with interest @ 9% p.a. by the Tribunal to legal heirs of *Rameshwar*, who had died due to injuries sustained in this accident.
4. The factual background of these appeals, as noticed in the impugned Award, is as under :-

“As per the case of petitioner, on 20.05.2011 at about 3:15 PM petitioner Neeraj was sitting in the vehicle bearing registration No. UP 12T 4797 (Swaraj Mazda) being the helper and Late Deepak was driving the vehicle and other helpers Shivraj & Rameshwar were also travelling as helpers. When their vehicle reached at Dhola Mazra Power House, G.T. Road, Near Shahabad, Distt. Kurukshetra, Haryana, a gas tanker bearing registration No. HR 29GA 3111 which was going ahead of victims’ vehicle driven by respondent no. 1 Rajinder in a rash and negligent manner suddenly applied the emergency brakes. As a result thereof victims’ vehicle hit against the same and overturned. All the occupants of Swaraj Mazda sustained injuries and they were rushed to CHC Hospital, Shahbad, Haryana, where his MLC

was prepared. FIR No. 141/11 U/s 279/337/304A IPC was registered at PS Shahbad, Distt. Kurukshetra, Haryana.

Respondent No. 1 was driver, respondent no. 2/owner and respondent no. 3/ the insurer of the offending vehicle.”

5. To render the impugned Award, the Tribunal has relied upon evidence of legal heirs of deceased and Injured persons and the other evidence on record. On the strength of evidence recorded, impugned Award has been rendered.

6. Learned counsel for appellant-Owner of the insured tanker in question, assails the impugned award on the liability aspect. It is submitted that merely because there was no endorsement on the driving licence of *Rajinder* to the effect that he was permitted to drive hazardous vehicle, would not justify putting of liability upon the appellant. It is submitted that *Mohd. Shabir* was the driver and *Rajinder* was the Assistant Driver and that after this accident, main driver-*Mohd. Shabir* had left the job and he is not traceable. Reliance is placed upon Supreme Court's decisions in *S.Iyyapan versus United India Insurance Company Limited & Anr.* (2013) 7 SCC 62 and *Kulwant Singh & Others versus Oriental Insurance Company Limited* (2015) 2 SCC 186 to submit that the liability to pay the awarded compensation is of respondent-*The New India Assurance Company Limited* (hereinafter referred to as 'the Insurer') and not of appellant-Owner of the Insured vehicle.

7. On the contrary, learned counsel for the respondent-*Insurer* supports the impugned award and submits that there is no infirmity in the impugned Award and so, these appeals deserve to be dismissed. Despite service, there is no representation on behalf of driver-*Rajinder* of the

insured vehicle. In view thereof, acquittal of driver-*Rajinder* by the Criminal Court is not being gone into.

8. Upon hearing and on perusal of the impugned Award, evidence on record and the decisions cited, I find that the driver of the insured vehicle was not having the endorsement to the effect that he is authorized to ply vehicle carrying hazardous goods. On scrutiny of evidence of appellant's witness-*Sh. S.K.Chadha (R2W-1)*, I find that there is no cross-examination of the witness on this aspect. Had there been any cross-examination of this witness (*R2W-1*) on this aspect, then the plea of driving licence of the driver of the insured vehicle could be considered. Due to lack of evidence on this aspect, the Tribunal was not justified in granting recovery rights to respondent-*Insurer* against the appellant-*Owner*. Solitary statement of witness Suraj Bhan Sharma (*R3W1*) from the concerned licensing authority regarding there being no endorsement on the driving license of driver-*Rajinder* permitting to ply vehicle carrying hazardous goods, is of no consequence unless the said plea is put to the owner of the insured vehicle.

9. So far as quantum of compensation awarded by the Tribunal is concerned, there is no challenge to it and rightly so, I find that the compensation granted to the respondents-Claimants is just and proper.

10. In the considered opinion of this Court, at best, recovery rights granted by the Tribunal to respondent-*Insurer* shall hold good qua the driver of the insured vehicle and not against appellant-*Owner*. Consequently, impugned Awards are modified to the extent of denying recovery rights to respondent-*Insurer* qua the appellant-*Owner*.

11. While modifying the impugned Awards to the aforesaid extent, the above-captioned four appeals and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 27, 2018
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