* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: July 18, 2018

\+ **MAC.APP. 826/2015 & C.Ms. 24221-22/2015**

MAHESH KUMAR ..... Appellant

Through: Mr. M.C. Sharma, Advocate

Versus

NATIONAL INSURANCE COMPANY LTD. & ORS. ..... Respondents

Through: Mr. D.K. Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 31st October, 2014 grants compensation of ₹11,30,000/- with interest @ 9% p.a. to respondents-claimants on account of death of one *Yogender Sahu,* aged 46 years, in a vehicular accident on 3rd September, 2013.

2. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"It is the case of the petitioners that on 03.09.2013 at about 21.00 hours the deceased namely Yogendra Sahu @ Jogender Sahu s/o Shri Khudhai Sahu, aged about 46 years, who was the bus driver had stood his vehicle on the side and was coming after eating the food on foot with his helper/conductor. During the said process when the deceased was crossing the road as per manner and proper side of the road and when the deceased reached Near Petrol Pump, Sohna Road, Islampur, Gurgaon, PS Sadar Gurgaon, Haryana all of a sudden one vehicle bearing No. DL-1Y-D-1746 (Maruti Eco Car) came in high speed, from the side of Sohna, which was being driven by the respondent No.1 in a rash and negligent manner and in contravention of the rules*

of traffic without blowing any horn and without giving any indicator, and hit the deceased with very great force and due to the forceful impact the deceased fell down on the road and sustained fatal injuries, after that the respondent No. 1 took the body of the deceased in his offending vehicle and threw the deceased in the Community Center, Secotr-47, Gurgaon and the respondent No. 1 ran away and the deceased died on the spot. It is averred that the deceased was removed to Government Hospital, where the post mortem was conducted by the doctors of the concerned hospital as per the statement of the eye-witness/conductor of the deceased's vehicle. It is averred that the accident occurred due to the rash and negligent driving of the respondent No. 1 who was driving the offending vehicle at the time of the accident in rash and negligent manner, and due to his act an innocent person became the victim of the same. It is stated that in respect of the accident FIR No. 598/13 under Sections 279/304A/201 IPC was registered at PS Sadar Gurgaon. It is averred that Rs. 50,000/- were spent on the last rites and funeral expenses of the deceased and the deceased died on the spot."

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* and the breakup of compensation awarded is as under:-

1.) Loss of dependency	:	₹9,60,000/-
2.) Love and affection	:	₹1,00,000/-
3.) Loss of consortium	:	₹50,000/-
4.) Loss of estate	:	₹10,000/-
5.) Funeral expenses	:	₹10,000/-
Total	:	₹11,30,000/-

4. The challenge to impugned Award by learned counsel for appellant-*owner and driver* of insured vehicle is on the ground that grant of recovery rights to respondent-*Insurer* against appellant is wholly

unjustified, as on the day of accident, appellant was holding *'Learner's license for light motor vehicles (commercial)'*.

5. On the contrary, learned counsel for respondent-Insurer disputes the aforesaid stand taken on behalf of appellant and supports the impugned Award and submits that there is no infirmity in it and so, this appeal deserves dismissal.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that as Insurance Policy in question stipulates that a driver of the insured vehicle should hold an effective driving licence on the day of accident. It also stipulates that he/she should not be disqualified from holding or obtaining such a licence. Undisputedly, appellant was holding a valid learner's driving licence for *light motor vehicles (commercial)* i.e. Maruti Eco Taxi in question. The evidence on record is silent on the aspect whether a person duly licensed to drive the said vehicle was accompanying the appellant or not. In the considered opinion of this Court, there is no conscious breach of the Insurance Policy in question. Therefore, grant of recovery rights by the Tribunal to respondent-*Insurer* is unjustified. Impugned Award is modified to the extent that the liability to pay the awarded compensation would be of the Insurer and not of the appellant-*owner and driver* of the vehicle in question.

7. With aforesaid modification, this appeal and the applications are disposed of.

(SUNIL GAUR)
JUDGE

JULY 18, 2018
r/v