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

% *Decided on: 19.08.2019*

\+ **MAC.APP. 283/2019 & CM No.8577/2019**

THE NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Himanshu Gambhir and Ms. Amandeep Kaur, Advocates.

Versus

NEETA KAPOOR & ORS. ..... Respondents
Through: Mr. S. N. Parashar, Advocate for Respondents No. 1 to 4.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. At joint request, the appeal is taken up for disposal.

2. The appellant has impugned the award of compensation granted on 28.11.2018 by the learned Tribunal in New MACT Case No. 476279/16. It is the appellant's case that the road-roller, which was involved in the accident, was not insured against any liability apropos third parties because it is not a motor vehicle. However, this issue has been dealt with in the impugned order as under:-

> *"46. It has to be seen that even the respondents no. 1 &2, in the reply to the present DAR/claim petition have not denied that the roadroller was being plied on the road for the purposes of repairing the road on the date and time of the*

accident. It has to be seen that in the authority cited as AIR 1995 Allahabad 253 titled as State of UP &Ors vs. Suresh Chandra, it has been held as under:-

> *"...Mr. Bisaria, learned Standing Counsel made a submission that road roller not being a motor vehicle, claim under the Motor Vehicles Act is not admissible and the application ought to have been rejected on that ground. In view of the definition of the motor vehicle in the Act we have no doubt that road roller comes within the definition and accordingly this contention of the appellant has no force.*
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> *In the light of the abovesaid authority, to my mind, the road roller falls within the definition of a Motor Vehicle and accordingly, the contentions of the respondents to the effect that the present DAR is not maintainable as the roadroller was not a vehicle under the MV Act cannot be upheld. Accordingly, the issue No.2 is decided against the respondents and in favour of the petitioners."*

3. The learned counsel for the respondents refers to section 2(16) of the Motor Vehicles Act, 1988, which defines "heavy goods vehicle" as:-

> *"(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;"*

4. Furthermore, an insurance policy was issued for use of the vehicle on a public road. The vehicle was being used to repair a public road in which the three-wheeler motor vehicle of the deceased was hit when the said road-roller was reversed into it. Insofar as a road-roller is a motor vehicle and since it was insured, the liability affixed on the appellant cannot be found wanting. The appellant's argument is untenable and is accordingly rejected.

5. The learned counsel for the appellant next contends that there were sufficient signs and markings on the road to divert traffic from the area, where the road was being repaired by the road-roller. It is also argued that the road-roller always moves at a slow pace and cannot possibly be the cause of an accident unless some other vehicle dashes into it because of its own uncontrollable speed. However, this issue has been dealt with in the impugned order as under:-

> *"19. In the cross-examination done by Ld. Counsel for the insurance company, PW-2 has stated that he does not know as to by whom the police was called at the spot. By way of volunteer, PW-2 states that someone from the public had called the police. PW-2 has further stated that the police had not recorded the statement of anyone else at the spot besides him. By way of volunteer, PW-2 states that as none was ready to give his/her statement. PW-2 has admitted it to be correct that the speed of the road roller was very low at the time of the accident. PW-2 has admitted It to be correct that at the spot of the accident, signs were put at the spot and barricading was also done by the authorities who were laying the road from which it was visible that the making of the road was in progress. PW-2 has also admitted it to be correct that the trucks containing the charcoal were stationed there and it was visible even from a distance that one had to refrain himself from going there as the road making was in progress. PW-2 has admitted it to be correct that the auto driver failed to see the signs and rammed into the road roller. PW-2 has further stated that he cannot tell as to whether the auto driver was driving the auto at a high speed. PW-2 has further stated that till date, he has not received any summons from the court of Ld. MM where the criminal case is pending. PW-2 has further stated that the police did not take him at the spot again for preparation of the site plan. PW-2 has further stated that the police had recorded his statement at about 7 or 7:30 AM when he reached back at the spot after performing his duties. PW-2*

has further stated that his statement was recorded by the police at the spot of the accident only.

20. The petitioners have further examined IO SI Sunil Kumar as PW-3 and this witness has stated that he has filed the DAR in the present matter which has already been exhibited as Ex. PW1/7 (colly) during the examination of PW-1. PW-3 has further stated that the accident in question took place because the driver of the road roller started moving the roadroller in the backward direction in a rash and negligent manner as stated by him in the investigation in the final report u/s 173 Cr. PC and in the present DAR also. PW-3 has further stated that he had recorded the statement of the eye witness Sh. Shamim Ahmad u/s 161 Cr. PC on 18.04.2015 and his statement is already a part of the DAR. PW-3 has exhibited his statement as Ex. PW3/1 and he has identified his signatures at point A encircled in red on the said statement. PW-3 has further stated that at the instance of Shamim Ahmad, the FIR was lodged by him. PW-3 has further stated that the strips were placed at a distance of 200 meters from the place of the accident and the same were not placed at the place of the accident. PW-3 has further stated that the abovesaid strips were not having any effect on the movement of the traffic and rather when he reached the spot, he had diverted the traffic for the purposes of carrying out the investigation.

21. In the cross-examination done by Ld. Counsel for the respondents No.1 & 2, PW-3 has stated that he got the complaint through DD Entry 12A about the accident in question at 4:00 AM. PW-3 has further stated that he reached at the spot within 10 minutes after receipt of the DD entry. PW-3 has further stated that when he reached at the spot, only Shamim Ahmad, the eye witness stayed there at the spot of the accident while the other taxi drivers left the spot despite the fact that they were present at the time when he reached at the spot. PW-3 has further stated that he started writing down the statement of Shamim Ahmad at about 5:00 AM and the same may have been concluded by 5:30 AM. PW-3 has further

stated that he sent the Rukka for lodging the FIR at 5:45AM through Constable Ram Singh.

22. PW-3 has admitted it to be correct that the job of construction of the road was going on at the spot of the accident. PW-3 has further stated that the road was being constructed from the side of Tilak Nagar Water Tank and the same was approaching towards Delhi Cantt. PW-3 has further stated that Tilak Nagar Water Tank was approximately at a distance of 2 kilometers back from the spot of the accident. PW-3 has further stated that he cannot admit or deny the suggestion that the road was being constructed from Tilak Nagar Flyover to Lajwanti Flyover. PW-3 has further stated that he has not filed the photographs alongwith the DAR.

23. PW-3 has admitted it to be correct that the strips were not confiscated by him. By way of volunteer, PW-3 has stated that as the same were 200 meters away from the spot of the accident and the same had not contributed to the accident.

24. In the cross-examination done by Ld. Counsel for the insurance company, PW-3 has admitted it to be correct that when he reached at the spot, the accident in question had already taken place. PW-3 has also admitted it to be correct that he had enquired the matter only from Shamim Ahmad.

25. PW-3 has admitted it to be correct that the accident in question had already been taken place prior to his reaching at the spot but from the scene of the occurrence, it was apparently visible that the roadroller was at fault."

6. What emanates from the above is that the Detailed Accident Report (DAR) itself records the lack of markings or signs on the road to divert traffic from the area where the road was being repaired. In fact, the investigating police officer/PW3-SI Sunil Kumar had stated that it is only when he reached the site that he started diverting traffic for the purpose of carrying out the investigation. Furthermore, he had recorded the statement

of the eye-witness Shamim Ahmad, who had narrated the manner in which the accident happened. What also emanates from the evidence is that the stripes or markings or signs indicating the on-going road repair were placed at a distance of 200 meters from the place of accident and not anywhere close to the site. In other words, there was insufficient indication for a motorist that the road was being repaired by the use of a road-roller. It has been proven that the accident happened on account of the road-roller reversing into the three-wheeler.

7. In view of the above, the argument of the appellant is untenable and is rejected. The Court finds no reason to interfere with the impugned order. The appeal is without merits and is accordingly dismissed. The pending application also stands dismissed.

8. The awarded amount which has been deposited by the Insurance Company, alongwith interest accrued thereon, shall be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.

9. The statutory amount of Rs.25,000/-, alongwith interest accrued thereon, be deposited in the 'AASRA' fund.

NAJMI WAZIRI, J.

AUGUST 19, 2019
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