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

\+ MAC.APP. 344/2019

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr.Pradeep Gaur and Mr.Amit Gaur, Advocates.

versus

PRIYA JAIN & ORS ..... Respondent

Through

\+ MAC.APP. 349/2019

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr.Pradeep Gaur and Mr.Amit Gaur, Advocates.

versus

PRIYA JAIN & ORS ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 11.03.2019

CM No.11125/2019 (Exemption) in MAC Appeal No.344/2019
CM No.11377/2019 (Exemption) in MAC Appeal No.349/2019

These applications have been filed seeking exemption from filing certified copies in the respective appeals.

The applications are allowed subject to just exceptions.

The applications stand disposed of.

The claims made by the respondents, which resulted in the impugned award dated 08.01.2019 passed by the MACT, are the outcome of an accident involving two motor vehicles.

The facts, as emerge from the record, are that on 25.04.2016 at about 10 AM, when Mr.Akash Jain (since deceased) along with Abhishek Jain, Shagun Goel and Mohini Verma, was travelling from Delhi to Rishikesh in Wagon R bearing registration No.DL-14 CB 2014 (in short 'the car'), an accident occurred with tractor bearing registration No.UP 15 BH 8058 (in short 'the insured tractor). The insured tractor, at the time of the accident, was attached with a trolly, laden with sand. The appellant-insurer does not dispute the factum of the involvement of the insured tractor and/or the finding arrived at by the Tribunal of rash and negligent driving of the insured tractor. The claims made by the respondents arose on account of death of Mr.Ankush Jain and Ms.Shagun Goel as also the injuries sustained by the other persons travelling in the car besides the damage to the car. In this factual conspectus, MAC Appeal No.344/2019 came to be preferred as regards the damage to the car i.e. Wagon R. In this claim petition, respondent Nos.1 & 2 – Ms. Priya Jain and Master Anav Jain, who were the widow and the son of the deceased Ankush Jain, made a claim for purposes of repairs of the car to the tune of Rs.6,87,627.94. The Tribunal in para 45 of the impugned award has observed that as per the Mechanical Inspection Report of the car, it was reduced to rubble. Such a fact is not disputed to by the appellant-insurer. In the given situation, the Tribunal has assessed the value of the car to be Rs.3,67,320/- as on the date of the accident, reserving the liberty to the appellant-insurer to seek possession of the car and realize the amount there-against, which, according to the appellant-insurer, has a value of Rs.75,000/-. After adjusting the said amount, the ultimate claim awarded by the Tribunal comes to Rs.2,72,320/- and that is in consonance with the value ascertained by the insurer itself. In the given situation, this court finds it difficult to understand as to what could be the dispute on such an amount awarded. It appears that the appellant-insurer has chosen to prefer this appeal unmindful of the nature of the subject and the objective of the MV enactment.

The other contention of the learned counsel for the appellant is as regards the use of the insured vehicle. Learned counsel for the appellant submits that though insured tractor was a Light Motor Vehicle, it was being driven attached with a trolly laden with sand, when the accident occurred and therefore, its use is to be treated as commercial. It is also the contention of the learned counsel for the appellant that the trolly, laden with sand, was being driven without any permit and, therefore, liberty ought to have been reserved to the appellant/insurer to recover the claims awarded from the owner and the driver of the offending vehicle. In support of such a contention, reliance is placed on *Natwar Parikh & Co. Ltd. Vs. State of Karnataka and Ors*; (2005) 7 SCC 364 and advertence drawn especially to para 22, 23 & 24, which read, as under:

22. The question still remains as to whether the *taxation authority was right in categorizing tractor-trailer as a separate assessable entity and whether that authority was right in calling upon the appellant to obtain permit under Section 66 of the MV Act, 1988.*

23. In order to answer this issue, we have to examine briefly Section 2, which is the definition section in the MV Act, 1988. In that connection, we reproduce hereinbelow the following:

"2. Definitions.-In this Act, unless the context otherwise requires, -

(14) 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods;

(28) 'motor vehicle' or 'vehicle means any mechanically propelled vehicle adapted for use upon rods whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premised or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters;

(44) 'tractor' means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a roadroller;

(46) 'trailer means any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle;

(47) 'transport vehicle' means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"

24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under section 2(28). Similarly, the word "tractor" is defined in section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforestated definitions under section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under section 2(47) of the M.V. Act, 1988.”

The foregoing observations of the Supreme Court in *Natwar Parikh's* case (supra) are made in the context of the use of the tractor-trailer/trolley and for the proposes of fixation of liability towards tax. More so, in the facts and circumstances of that case. Suffice to say, the contention of the learned counsel for the appellant in the instant case is with regard to the use of the insured tractor, for the claim(s) of compensation to the victim(s), as provided for under Chapter XII of the Motor Vehicle Act. During the course of hearing, on being queried, the learned counsel for the appellant could not dispute the fact that the insured tractor was a light motor vehicle. The learned counsel also does not dispute the fact that the insured tractor, which is primarily to be used in the fields, can also be run on the roads even when attached with a trolley. It can't be equally comprehended that the insured tractor, when attached with a trolly, would lose the character of an LMV and the licence of the driver for LMV-NT i.e. for non transport, be invalid. On the mere fact that at the time of accident, the trolley attached to the insured tractor was laden with sand, an inference cannot be drawn that it was meant for commercial purpose. Can't the sand be utilized for agricultural purposes or personal use? Be that as it may, the fact remains that the rash and negligent driving of the insured tractor is not in dispute and, in the considered opinion of the court, the trolley laden with sand attached to it, ipso facto, cannot change the character of the insured tractor nor can it be said that the driver was not driving with a valid licence. It is also not the case of the insurer-the appellant that the insured tractor, under the terms and conditions of the insurance policy, could not be attached with the trolly laden with sand or any other material. Issuance of LMV-NT licence connotes the nature of the vehicle, it permits to drive. An LMV-NT licence by itself, would suggest licence to drive an LMV for personal use. In the given situation, the contention of absence of permit for the trolley to be brought or driven on road loses significance.

Mr.Gaur, learned counsel for the appellant, has though also placed reliance upon a judgment of a learned single Judge of this court in New India Assurance Co.Ltd. vs.Rajesh Kumar & Ors. passed in MAC Appeal No.1053/2011, it would suffice to say, in the said judgment, no opinion on the subject has come to be given by the learned single Judge, while remanding the subject matter to the Tribunal. In view thereof, the contention of drawl of any parity for remand to the Tribunal, in my considered view, is misconceived. More so, when the facts of the said case are also not brought out to the notice of the court.

In view of the foregoing, MAC Appeal No.344/2019 is dismissed. Consequently, the statutory amount of Rs.25,000/-, if, lying deposited, be refunded to the appellant.

In MAC Appeal No.349/2019, it is contended that while assessing the compensation taking into account the income of the deceased, the Tribunal has overlooked the fact that the monthly payments made by the employer to the deceased included elements like conveyance for office purpose, HRA, etc.

Issue notice of MAC Appeal No.349/2019 & CM No.11376/2019 to the respondents on PF/RC, returnable for

02.09.2019. It is also directed that subject to the appellant-insurer depositing 60% of the award amount with the Tribunal within four weeks from today, the operation of the impugned award shall remain stayed. On the deposit so made, the Tribunal shall direct its apportionment and disbursal in consonance with the terms of the award.

Dasti.

A. K. CHAWLA, J

MARCH 11, 2019/dm