$~45 & 46

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

% *Decided on: 27.09.2019*

\+ MAC.APP. 1002/2018, CAV 1039/2018 & CM APPL. 47259/2018

NATIONAL INSURANCE CO LTD ..... Appellant

versus

NISHO & ORS ..... Respondents

\+ MAC.APP. 434/2019

NISHO & ORS ..... Appellants

versus

NATIONAL INS CO LTD & ORS ..... Respondents

Through: Ms. Shantha Devi Raman and Ms. Aishna Jain, Advocate for appellant in Item No. 45 and for R-1 in Item No. 46.
Mr. Amitabh Jha, Advocate for R-8 & R-9 in Item No. 45.
Mr. Praveen Kumar Singh, Advocate for appellant in Item no. 46 and for R-1 to R-7 in Item No. 45.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The award of compensation dated 01.08.2018 in DAR 106/2018 passed by the learned MACT is impugned on the ground that the motor-

vehicular accident was caused by a tractor to which a trolley was attached in which bricks were being carried. It is contended that since the trolley was not insured, the insurance company would not be liable for indemnification of any loss.

2. The argument though attractive at first blush, is misplaced and contrary to the records, because the accident was not caused by any part of the trolley but by the tractor itself. The claimants have proven that while boarding the tractor, the victim slipped and got crushed under its big left rear wheel. It has been recorded in the impugned order as under:

> *"5. Father of deceased filed his affidavit by way of evidence Ex. PW 1/A and examined himself as PW-1. Witness has relied upon the documents i.e. photocopy of adhar card of deceased Vaseem Ex. PW 1/1, photocopy of adhar card of Saheed Ex PW 1/2, photocopy of adhar card of Neso Ex. PW 1/3 and attested copy of DAR Ex. PW 1/4.*
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> *Petitioner also examined other witness i.e. Mohd. Shokeen as PW-2 deposed that on 15.02.2018 he was going on foot to offer Namaz at masjid from his house. At about 6.15 am when he reached near Tirpal factory, Brijpuri pulia, main road PS Gokalpuri, he saw a tractor bearing no. HR-13M- 8032 was parked near tirpal factory. A person was boarding on the tractor which was moving. When he was boarding his leg slipped and fell down on the road. As a result of this, rear left wheel of the tractor run over his pelvis. Due to which he sustained grievous injuries. Public gathered at the spot. The driver of the tractor run away from the spot and left behind the tractor at the spot. Injured was removed to hospital but he does not know by whom he was removed. Police did not record his statement nor enquired him at any time regarding the accident. Petitioner also examined other witness i.e. Rahid as PW-3 by way of affidavit Ex. PW 3/ A. Witness has relied upon the documents i.e. adhar card of Rashid Ex. PW 3/1 and*

application dt. 14.05.2015 Ex. PW 3/2. Petitioner also summoned and examined the witness i.e. SI Rajender Prasad, No. 3500, MACT Cell as PW-4 deposed that he is second IO of the case FIR No. 74/18 dated 15.02.2018 registered at PS Gokalpuri u/s, 279/338/304-A IPC. He investigated the matter and after the investigation he has filed the DAR before this Tribunal already Ex. PW-1/4 (Colly. 50 pages). As-per investigation, he has filed chargesheet against the driver Saniyab after the investigation and the attested copy of chargesheet is part of Ex.PW-1/4 at page no. 32 to 38. Petitioner also examined other witness i.e. Sh. Shahnawaz as PW-4 by way of affidavit Ex. PW 4/ A. Witness has relied upon the documents i.e. adhar card Ex. PW 4/1 and letter addressed to ACP, MACT Cell, Yamuna Vihar mark A. PE was thereafter closed."

3. The learned counsel for the insurance company argues that the insurance cover for the vehicle was only for agricultural and forestry purposes. The owner of the offending tractor had stated that they were transporting bricks for the purpose of laying a road in front of the farmhouse. At the time of the accident, the insured tractor was being used for transporting bricks; which would not be considered agricultural purpose.

4. What is to be seen is the vehicle which caused the accident. If at the relevant time the vehicle had been used only for agricultural or forestry purposes, the insurer would be liable to indemnify the loss. The vehicle which was insured was the tractor and not the trolley. Attachment of trolley to it for non-agricultural purposes would be a breach of policy conditions but if the accident had been caused by the trolley which was carrying the bricks, then such accident would not be covered by the insurance policy.

5. The insured vehicle was moved only for the sake of carrying bricks in the trolley attached to it, the attachment of the trolley itself was a breach of

policy condition; and the movement of the same caused the unfortunate accident. However, under the principle of 'pay and recover', the insurer will first pay the compensation and is granted the right to recover the same from the owner of the vehicle.

6. The learned counsel for the insured submits that as per the clause 'limitation as to use' the policy permits use of the vehicle for social, domestic and enjoyment(fun) purposes. The expression in Hindi reads as '*samajik, gharelu and anandpurn*'. This is an endorsement shown at pages 295 to 299 of the LCR. This is a document issued on behalf of the insurance company, which was verified on 31.05.2018. However, the insured himself has not filed a copy of the insurance policy which was issued to him. The learned counsel for the insurer has produced the copy of the insurance policy bearing no. 360401311710003917, in which the limitation to use is mentioned on the first page itself. The same forms the part of the LCR at pages 305 to 311. Neither of the two documents have any stipulation apropos 'limitation as to use' as has been contended by the insured hereinabove. In fact, the limitation as to use filed by the insurer reads as: "*The policy does not cover :Use of hire or reward other than for the purpose of driving tuitions or for racing pace making reliability trial or speed testing*'. In other words, the indemnity is only to the extent of the business of the insured. In the present case, the business mentioned in the policy was for "agricultural and forestry purposes". The use of tractor to pull a trolley loaded with bricks cannot be considered as agricultural purposes. The accident occurred under the wheels of the tractor and not on account of using the trolley. In the circumstances, such use by itself was not covered

under the policy. Hence, the contention of the owner is untenable and is accordingly rejected.

7. The next argument is about the adoption of the basis of minimum wages applicable to an unskilled worker in Delhi. It is the appellant's case that the address of each of the claimants is shown as H.No.23, Kaserwa, Muzaffarnagar, Shahpur, Uttar Pradesh. There is nothing on record to show that the deceased was residing in Delhi. There is no averment to this fact in the claim petition. Even the card issued to him by UIDAI shows his address as mentioned hereinabove. The address of the owner of the vehicle is shown in Jhajjar, Haryana, the address of the driver of the vehicle also is shown in Loni, Gaziabad, U.P.

8. What needs to be determined is whether the deceased worked for gains in Delhi. There is no proof to this fact. Therefore, for the learned Tribunal to have adopted the minimum wages applicable in Delhi is erroneous. According to the learned counsel for the parties, the minimum wages applicable to an unskilled workman in U.P. i.e. Rs. 7,400/- ought to have been made applicable. It is so directed to be considered. His "loss of dependency" shall be:

Rs. 7,400/-x12x18x50/100x140/100= Rs. 11,18,880/-

9. Additionally, each of the seven claimants shall be entitled to compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.***, 2018 SCC OnLine SC 1546**.** Similarly, compensation towards 'Funeral Expenses'and 'Loss of Estate' shall also be awarded @ Rs.

15,000/- under each head in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.,*** (2017) 16 SCC 680.

10. The total amount payable to them shall be:

S.No.	Particulars	Amount
1.	Loss of Dependency Rs. 7,400/- (minimum wage)x12 (months)x 18 (multiplier)x50/100(50% deduction towards personal expenses)x140/100 (loss of future prospects).	Rs. 11,18,880/-
2.	Loss of love and affection [Rs. 50,000x7 (claimants)]	Rs. 3,50,000/-
3.	Loss of Consortium [Rs.40,000x7 (claimants)]	Rs. 2,80,000/-
4.	Loss of Estate	Rs. 15,000
5.	Funeral Expenses	Rs. 15,000
Total		**Rs. 17,78,880/-**

11. If not already done, let the total amount of Rs. 17,78,880/-, alongwith interest thereon @ 9% from the date of filing of the claim petition, be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award, in terms of the scheme of disbursement specified therein.

12. Since the appellant has partly succeeded in the appeal, the statutory amount of Rs. 25,000/-, alongwith interest accrued thereon, be returned to it.

13. The appeals are disposed-off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 27, 2019/AB