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

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Decided on: 23.10.2019

+ **MAC.APP. 280/2018 & CM APPL. 9999/2018**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

ASHOK JAIN & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 20.12.2017 passed by the learned MACT in MACT Petition No. 815/07 (New No. 50286-16) on the ground that the claim petition was not maintainable apropos the injury caused by boiling water gushing out from the radiator of the bus and burning the claimant.

2. The facts of the case are that when the claimant was travelling in a bus from Delhi to Ludhiana, the bus was halting at frequent intervals because its engine was getting heated-up and in order to cool it down, the driver used to regularly filling its radiator with water. Despite repeated protests of the claimant and the other co-passengers, the driver did not pay any heed to them and kept on repeating the cumbersome chore exposing the occupants of the bus to danger, especially the ones sitting in the front. The claimant was sitting on the front side of the bus, i.e. against the engine and

on one such occasion when the cap of the radiator of the tank was opened, the boiling water gushed out from it sprayed over him and caused him deep dermal burn injuries on the left side of his back, left part of the abdomen and the left arm. He remained admitted in a hospital from 15.04.2007 to 06.05.2007 and has been certified to have suffered injuries to approximately 30% TBSA.

3. Of the two issues determined by the learned Tribunal, one was whether the petition was maintainable on the ground that there was no rash and negligent driving on the part of the driver of the vehicle and the other was, whether the injuries sustained by the claimant could be considered on account of rash and negligent driving by the driver.

4. To the issue, the learned Tribunal had given its finding in the affirmative for the following reasons:

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the driver/R2 was negligent as he did not exercise reasonable care while having a duty to take reasonable care to avoid acts or omission which could be reasonably foreseen to be likely to cause physical injuries to persons. In the present case, R2 (driver) opened the lid (cap) of the radiator of the offending bus which as per the testimony of PW1 was already having mechanical defects due to which It was getting heated up time and again and due to opening of the said lid (cap) of the radiator, boiling water fell on the petitioner. R2 as a reasonable and prudent man should, have foreseen that by opening the lid (cap) of the radiator, the boiling water from it can fall upon the passengers sitting near by it in the bus and it actually happened due to which petitioner received serious burn injuries. In the said circumstances and settled law, it can be safely, held that the

petitioner sustained Injuries out of the use of the motor vehicle (offending vehicle), the accident, in question is a motor accident within the meaning of Section 165 of M.V. Act, 1988 and that the present petition is maintainable before this Tribunal, it can also be safely held that the petitioner received burn Injuries due to the rash and negligent act of the driver/R2 of the offending bus on the above said date, time and place.”

5. The learned Tribunal relied upon the dicta of the High Court of Rajasthan in ***Krishna Roadways, Nathdwara v. Madan Lal and Others***, S.B. Civil Misc. Appeal no. 12 of 1973 decided on 11.11.1983, 1984 A.C.J. 263, in which, identical facts were examined, wherein the steam from boiling water oozing out from the radiator caused extensive burn injuries on the claimant and the same was found to be as a result of rash and negligent driving. It held as under:

“8.....It has been admitted that Someshwar was sitting in the bus and he was sitting on the front seat on the left of the engine out of which a portion of the radiator was coming out The lid (cap) of the radiator was thrown by the force of the steam and the boiling water from the radiator fell on the body of Someshwar, which resulted in causing extensive burns over his body. It cannot be denied that the vehicle was not in use at that time. This sudden even or unexpected happening or misfortune happened causing burns not due to the fault of Someshwar but from the consequence of which he may be entitled to some legal relief. The vehicle was in use and while it was in use the unexpected event had happened.

9. In these circumstances, there is no room for debate that Someshwar had died in an accident which arose out of use of the motor vehicle. The Tribunal has correctly held that the accident in question is a motor accident within the meaning of Section 110 of the Act and,

therefore, the Tribunal had jurisdiction. to entertain it The first contention raised by the learned counsel for the appellant is therefore, repelled.

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12. 'Negligence' is the omission to do which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Negligence is not a question of evidence; it is an inference to be drawn from proved facts. N Negligence is not an absolute turn but is a relative one. it is rather a comparative term. Where there is a duty to exercise cane, reasonable care must be taken to avoid acts or omission, which could be reasonably foreseen to be likely to cause physical injury to persons. Saligram (driver) should have kept the lid (cap) properly and as a reasonable and prudent man should have foreseen that the lid (cap) might be thrown by the force of steam and the boiling water could come on Someshwar causing burnt Injuries. In my opinion, the Tribunal was right and justified in holding that it was the negligence of the driver Saligram, which resulted in the accident"''

It also relied upon the dicta of the Bombay High Court in ***Oriental Fire & General Insurance co. Ltd v Suman Navnath Rajguru & Others***, First Appeal no. 2540 of 1983, decided on 17.11.1984, 1985 A.C.J. 243, which too in similar circumstances relied on the principles of *res ipsa loquitor*.

6. What emanates from the preceding discussion is that the accident happened when the claimant was travelling in a bus from Delhi to Ludhiana. The bus was stopped at every some distance to keep its heated-up engine cool by filling cold water in its radiator so as to keep it motorable. Any

rational person would understand that the opening of the radiator lid would have a consequence of steam and boiling water jetting out of it. The passengers were seated right next to the bus engine. They were exposed to the risk of being burnt by the said emission from the radiator. It was the duty of the driver to ask the passengers to move aside in order to avoid any likelihood of injury whenever the radiator lid was opened. This caution and care towards the passengers' safety was thrown to the winds. On the contrary, despite the protestation of the claimant and other passengers to have the engine repaired, the driver ignored their protestation and continued with his rash and negligent act, of himself fixing the engine each time in the manner that he did, exposing the claimant and other passengers to the risk of injury, which the claimant eventually suffered. The plying of the vehicle in such a manner as the driver did, amounts to rash and negligent driving.

7. In view of the above, there is no merit in the appeal and it is accordingly dismissed.

8. Statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund opened by this Court.

OCTOBER 23, 2019

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NAJMI WAZIRI, J