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

% *Decided on: 30.10.2019*

\+ MAC.APP. 1064/2013

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

RAM BAI & ORS ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 21.09.2013 passed by the learned MACT in Suit No. 11/2012 on the ground that the insurance company is not liable to pay compensation as the offending vehicle was insured only for the "site risk" and not for 'transit risk' and it did not cover the risk apropos third party.

2. The impugned order has dealt with the issue as under:

> *"ii) It is stated by respondent no.2/owner of offending vehicle that since they have insured the offending vehicle with respondent no.3/ National Insurance Company Ltd., respondent no.3 is liable for the payment of compensation.*
>
> *It is stated by respondent no.3/National Insurance Co. that they are not liable for the payment as offending vehicle was insured only for the site and offending vehicle was not insured for 'transit risk' and*

placed on record Insurance Cover Note containing condition no. (h) of 'Exceptions clause' which says that "The Company shall not be liable under this policy in respect of-..... (h) loss or damage whilst in transit, from one location to another location. (Public Liability will not be payable while Contractors Plant & Machineries are on Public Roads)." Respondent no.3 stated that since the offending vehicle was on transit, they are not liable to pay claim in view of condition (h) of Exceptions clause of Insurance Cover Note. On the other hand, petitioners as well as respondent no.2 submitted that insurance includes the third party insurance and hence, only respondent no.3 is liable to pay the claim and cited Surendra Kumar & Ors. vs. Abdul Salim and Ann 2011 ACJ 1860 wherein it was held that confining the liability of insurance company to the extent of Rs.50,000/- is bad as liability of insurance company against third party is unlimited.

R2W1 Sh. Amit Kumar Chattarjee, Development Officer, National Ins. Co. in examination-in-chief deposed that interim protection note Ex.R2W1/A is for the comprehensive policy of the entire mobile machinery plant. However, in cross-examination, he admitted that in the protection note at point PX it is written as Basic+third party.

In view of above, I am of the considered opinion that since petitioners/claimants are third party, respondent no.3 is liable to pay the claim/compensation/award."

3. The policy at page 43 of the paperbook is titled as 'Contractors Plant and Machinery Insurance'. The Court would note that the insured vehicle

was an Ashok Leyland 2516 Truck which could be moved from one site to the other. It is a motor vehicle.

4. The accident happened on the road. The insurance company has admitted that the policy covered basic and third party risk. The victims of the accident were a third-party therefore the insurer would be liable to pay the loss.

5. The next argument is apropos the quantum of compensation awarded. The deceased was 59 years of age at the time of the motor vehicular accident and he was considered as self-employed and earning Rs. 8,000/- per month, on it an addition of 50% was granted as compensation towards 'loss of future prospects'; whereas in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors***., (2017) 16 SCC 680, the same ought to have been granted @ 10% for a person presumed to be self-employed and falling in the age bracket of 50 to 60 years. Accordingly, the award of pecuniary compensation shall be computed as under, alongwith interest accrued in terms of the impugned order:

Rs. 8,000 (monthly income of deceased) x 12 (months) x 9 (multiplier) x 75/100 ($1/4^{th}$ deduction towards personal expenses) x 110/100 (loss of future prospects) = Rs. 7,12,800/-.

6. Excess amounts, as may be, alongwith interest accrued thereon, shall be refunded to the appellant.

7. Since the appellant has succeeded partially, the statutory amount, alongwith interest accrued thereon, shall be returned to the appellant.

8. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

OCTOBER 30, 2019

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