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

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Decided on: 17.10.2019

+ **MAC.APP. 520/2015**

UNIVERSAL SOMPO GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr. Abhishek Mishra, Adv.

versus

LRS OF SONU & ORS

..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-2&3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 13587/2019 (delay of 1120 days in filing cross objections)

1. MAC. APP. 520 was filed in 2015 but cross objections were filed four years later.
2. There is a delay of 1120 days in filing of the same even though the cross objector knew fully well about the pendency of this case way back in 2015.
3. There is no justification for the delay of 1120 days; the delay cannot be condoned. In the circumstances, the application seeking condonation is dismissed and so is CM APPL. 13586/2019 for cross objections.

MAC.APP. 520/2015

4. This appeal impugns the award of compensation dated 23.03.2015 passed by the learned MACT in MACT Case no. 181/10 as it did not grant

the appellant the right of recovery against the owners and the driver of the offending vehicle which was insured by the appellant.

5. The appellant contends that the person who died in the accident while sitting on the insured tractor was a gratuitous passenger, therefore the insurer would not be liable to indemnify and pay any compensation amount. However, the learned counsel for the appellant fairly concedes that in view of the dicta of the Supreme Court in ***Manuara Khatun and Ors. vs. Rajesh Kumar Singh and Ors.***, (2017) 4 SCC 796, the insurance company shall be liable to pay compensation to the claimants and thereafter recover the same from owner / driver of the vehicle. This principle has also been applied by this Court in ***Mohsina vs. Bajaj Alliance Gen Ins. Co. Ltd. & Anr.*** in MAC APP. 1017/2018 decided on 21.08.2019, which held as under:-

*“2. ...Secondly, it is argued that under the settled principle of ‘pay and recover’, the insurance company should first pay the money and recover the same from the owner of the vehicle. The learned counsel for the appellant refers to the decision of this Court in ***Shriram General Insurance Co. Ltd. vs. Anila Devi & Ors.***, MAC APP. 1139/2018 decided on 24.07.2019.*

*3. The aforesaid contentions are refuted by the learned counsel for the insurance company on the ground that: i) the deceased was a gratuitous passenger and ii) he was travelling in rear of the vehicle and not in the passenger cabin. However, both the refutations are untenable in view of section 147 of MV Act, as referred to hereinabove and the fact that the deceased was the owner of the goods - his two buffaloes and was travelling in the insured vehicle. Secondly, apropos the gratuitous passengers too, in ***Manuara Khatun and Others vs.****

Rajesh Kumar Singh and Others, (2017) 4 SCC 796, the Supreme Court has held as under:

“15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover.”

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18. Learned counsel for respondent No. 3 (United India Insurance Company Ltd.), however, contended that the facts of the case at hand are not identical to the one involved in the case of Saju P. Paul (supra) and hence the law laid down therein cannot be applied to the facts of the case at hand. Learned counsel pointed out that firstly, the awarded compensation in this case is quite

substantial and secondly, it is not yet paid to the claimants. Learned counsel also submitted that since the question involved herein is referred to a larger Bench and hence this Court should not give such directions, as prayed by the appellants, against the Insurance Company.

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. *In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.*

22. *Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."*

4. *The facts of the present case are similar to the facts of Shriram General Insurance Co. Ltd. (supra).*

5. *In view of the above, not only would the deceased be covered under the policy as mentioned under section 147(1)(b)(i) of MV Act, but also he would be entitled to payment of the awarded*

amount first by the insurance company to be recovered from the owner of the vehicle. Let it be so done.”

6. In the present case, it having been proved that the deceased was travelling as a gratuitous passenger, which was a breach of policy condition, the appellant would be entitled to the right of recovery against the owners of the vehicle. It is so granted.

7. The awarded amount, as deposited by the appellant, shall be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein within three weeks from the date of receipt of copy of this order.

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

9. Since the appellant has partially succeeded in the appeal, let the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

OCTOBER 17, 2019

AB

NAJMI WAZIRI, J