

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

% **Judgment delivered on: 9th January, 2019**

+ **MAC. APP. 866/2017, CM APPL. 35159/2017**

NEW INDIA ASSURANCE CO. LTD.

...Appellant No.1

Through: Mr. S. P. Jain, Advocate with
Mr. Himanshu Gambhir and
Mr. Amandeep Kaur,
Advocates.

versus

1. SANTOSHI DEVI
W/o Lt. Sh. Bhure Lal
2. MASTER PRIYANSHU
S/o Lt. Sh. Bhure Lal
3. BABY PRIYA
D/o Lt. Sh. Bhure Lal
4. BABY PREETI
D/o Lt. Sh. Bhure Lal
5. KUMAR LAL
F/o Lt. Sh. Bhure Lal
6. ROHITASH GURJAR
S/o Sh. Matadeen
7. HANSRAJ GURJAR
S/o Sh. Matadeen

...Respondents

Through: Mr. S.N. Parasher, Advocate.

+ **MAC. APP. 86/2018**

**ROHITASH GURJAR
HANSRAJ GURJAR**

...Appellant No.2

...Appellant No.3

Through: Ms. Ankita Choudhary, Advocate.

versus

1. SANTOSHI DEVI
W/o Lt. Sh. Bhure Lal
2. MASTER PRIYANSHU
S/o Lt. Sh. Bhure Lal
3. BABY PRIYA
D/o Lt. Sh. Bhure Lal
4. BABY PREETI
D/o Lt. Sh. Bhure Lal
5. KUMAR LAL
F/o Lt. Sh. Bhure Lal
6. NEW INDIA ASSURANCE CO. LTD. ...Respondents

Through: Mr. S.N. Parasher, Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The Appellant No.1 by MAC. APP. 866/2017 and Appellant No.2 and 3 by MAC. APP. 86/2018 has challenged the impugned award in DAR proceedings arising from Suit No. 4633/16 in respect to FIR No. 180/16 registered at P.S. Sun Light Colony, Delhi under Section 279, 304A IPC dated 07.04.2016 whereby the compensation of Rs.21,53,000/- alongwith interest at the rate of 9% p.a. on the total compensation amount from the date of filing of DAR i.e., 08.06.2016 till its realization has been awarded in favour of

Respondent/Claimants. The compensation amount was directed to be given by Appellant No.1 to the claimants and further granted recovery rights to Appellant No.1 qua Appellant No.2 and 3.

2. The facts alleged are that on 07.04.2016 at about 4:30 AM at J.K. Batching Plant, Yamuna Khadar, Sarai Kale Khan, New Delhi. Bhure Lal (Deceased) aged 31 years was entrusted for unloading Sand/Rodi Badarpur from the truck bearing registration No. RJ-14GF-3534(*hereinafter called the offending vehicle*) which was being driven by Appellant No. 2 Rohitash Gurjar (Driver). While deceased was helping the said truck to reverse, driver reversed it in a rash and negligent manner and unfortunately deceased got crushed between the truck and a pole and suffered fatal injuries. He was taken to Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi where he was declared brought dead vide MLC No. 552509/16. The post mortem of the deceased got conducted at the same hospital. Subsequently, FIR No. 180/16 was got registered at P.S. Sun Light Colony, Delhi under Section 279, 304A IPC dated 07.04.2016 on complaint of Eye Witness Sh. Ajij S/o Sh. Nazir Khan R/o Village Satra Foot, Chharra, District Aligarh, U.P.

3. On the basis of pleadings and evidence led by the parties, impugned award in Suit No. 4633/16 dated 22.08.2017 was passed by Sh. Rajeev Bansal, PO MACT, Saket Courts, New Delhi (*henceforth referred to as the Tribunal*) and compensation of Rs.21,53,000/- alongwith interest at the rate of 9% p.a. on the total compensation

amount from the date of filing of DAR i.e., 08.06.2016 till realization was granted. The compensation amount was directed to be given by Appellant No.1 to the claimants and further granted recovery rights to Appellant No.1 qua Appellant No.2 and 3.

4. The breakup of compensation awarded is as under:-

1.	<i>Compensation towards financial loss.</i>	<i>Rs. 13,77,792/-</i>
2.	<i>Compensation towards cremation charges.</i>	<i>Rs. 25,000/-</i>
3.	<i>Loss of estate.</i>	<i>Rs. 1,00,000/-</i>
4.	<i>Loss of love and affection.</i>	<i>Rs. 4,50,000/-</i>
5.	<i>Loss of guidance.</i>	<i>Rs. 1,00,000/-</i>
6.	<i>Loss of consortium.</i>	<i>Rs. 1,00,000/-</i>
	<i>TOTAL</i>	<i>Rs. 21,52,792/- rounded off to Rs. 21,53,000/-</i>
<i>Interest awarded at the rate of 9% p.a. till realization of the amount.</i>		

5. The Appellant No.1 has challenged the impugned award on the ground that Appellant No.2 was negligent at the time of driving the truck and the Tribunal has granted an exorbitant amount of compensation to the claimants. Appellant No.2 and 3 has challenged the impugned award on the ground that Appellant No.2, Rohitash Gurjar driver of the offending vehicle was not disqualified from holding the driving licence which got renewed by paying requisite penalty and he effectively and efficiently knew how to drive the motor vehicle on public roads and as such there is no violation of the terms and conditions of the insurance policy. Therefore, Appellant No.1

cannot seek recovery right and relied on apex court judgment in *National Insurance Co. Ltd. V. Om Prakash & Ors.* MACD 2012 (3) (P&H) 1380.

6. Per contra, learned counsel for respondents argued that the loss of future income be increased by 40% and relied on the apex court judgment in *National Insurance Co. Ltd. V. Pranay Sethi* SLP(C) 25590/2014 and *Rajesh & Ors. V. Rajbir Singh & Ors.* 2013(9) SCC 54.

However, no counter claim/cross objection is filed on behalf of the claimants.

7. The Claimant/Respondent Smt. Santoshi Devi has examined herself as PW1 and has filed affidavit Ex.PW1/A as Examination-in-Chief, she has also examined Sh. Ajij as PW2 who is the eye witness and co-worker of the deceased. Appellant No.2 Rohitash Gurjar has examined himself as R1W1 and has filed affidavit Ex.R1W1/A as Examination-in-Chief. Appellant No.3 Sh. Hans Raj Gurjar (Owner of the offending vehicle) has examined himself as R2W1 and has filed affidavit Ex.R2W1/A as Examination-in-Chief. The Eye Witness PW2 in his Examination-in-Chief has specifically stated that he was at the spot and that the deceased was helping the driver of the truck in reversing the truck and that driver negligently and rashly reversed the truck at a fast speed as a result of which the deceased got crushed between the truck and a pole and later was declared brought dead in the hospital.

8. It is evident from the records that on the date of the incident i.e. 07.04.2016, Appellant No. 2 Rohitash Gurjar was having a valid Driving licence issued on 30.11.2011. The accident occurred on 07.04.2016. The said driving license expired on 08.01.2016, however the same was renewed on 11.04.2016.

Initially, Rohitash Gurjar, driver of offending vehicle fulfilled all requisites for holding a valid license on the date of issuance i.e. 30.11.2011 and he also fulfilled all the requirements on the date of renewing of the license i.e. 11.04.2016 after the accident, what was lacking was only the formality of renewal, which does not go to the roots of invalidation of the driving license on the date of the accident i.e. 07.04.2016. The same driving licence was renewed on 11.04.2016 which indicates that he held good in all respect to hold a valid license even on the date of the accident as the same has been renewed on 11.04.2016.

9. Moreover, Section 15 of Motor Vehicles Act, 1988 gives an option to any person whose validity has expired to renew his license after paying the requisite penalty which *ipso facto* shows that once a driver holds a valid licence, his driving license continues to be so till it is explicitly invalidated on certain specific grounds.

Therefore, in the instant case Appellant No.2 was not suffering from any disqualification and section 15(4) of Motor Vehicles Act, 1988 recognises renewal of license after the period of 30 days by paying requisite fine. Thus, Tribunal went wrong on point of liability

and reached to a different conclusion.

Reliance is placed on *National Insurance Co. Ltd. V. Om Prakash & Ors.* 2012 ACJ 1566.

10. As discussed above appeal of Appellant No.2 and 3, driver and owner of the offending vehicle in MAC. APP. 86/2018 is allowed. Consequently, Appeal of Appellant No.1 in MAC. APP. 866/2017 is dismissed. Award of the Tribunal is modified to pay the awarded amount to the claimants by Appellant No.1, New India Assurance Co. Ltd. only and recovery right granted to Appellant No.1 is set aside. Accordingly both appeals are disposed of. No order as to costs.

11. The balance awarded amount be released to the claimants after proper application being made by the claimants in this regard and to the satisfaction of the tribunal. LCR File be sent back.

12. This Judgment would not affect the outcome on merit of the criminal case vide FIR 180/16.

13. Let one copy of this judgment be placed on record of MAC. APP 86/2018 as well.

I.S.MEHTA
(JUDGE)

JANUARY 09, 2019