



\$~37

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

%

Judgment delivered on: 17.01.2022

+ MAC.APP. 15/2022 & CM APPL. 2953-54/2022

UNITED INDIA INSURANCE CO. LTD Appellant

versus

SMT ANITA DEVI AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sankar N.Sinha, Advocate.

For the Respondent: Mr. Somnath Parashar, Advocate for R-1 to 4.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Appellant impugns award dated 27.11.2021 to the limited extent that it grants recovery rights against the driver of the vehicle.
3. Learned counsel for the appellant submits that since the vehicle was stolen and driver was a professional thief there was no liability on the insurance company to pay the amount.
4. The factual matrix of the case is that on 28.01.2015 the deceased was going to Pocket-1, Sector B-4, Narela, Delhi on a scooty and at about 5.30 AM when he reached near Pocket 13, Sector-4,



Narela, Shahpur Road, Narela, Delhi the offending Eeco Car being driven in a rash and negligent manner by one Sh. Niraj @ Mika came and hit the scooty of the deceased with great force. As a result of the forceful impact deceased fell down and sustained fatal injuries.

5. The tribunal has found that the offending vehicle was stolen by Niraj @ Mika and a complaint was already lodged with Police Station Narela with regard to the theft of the offending vehicle. The vehicle was insured with the appellant.

6. The question that arises for consideration is as to whether the insurance company is absolved of the liability to pay the amount in a case where the vehicle is stolen and unauthorisedly being driven by somebody else.

7. The Supreme Court of India in *United India Insurance Company vs. Lehu and Ors*, 2003(3) SCC 338 has held that in order to avoid the liability, the insurer must establish that there was a willful breach on the part of the insured.

8. Admittedly in the present case the insurance company has not been able to show any breach on the part of the insured to avoid its liability.

9. The judgment in the case of *Lehu (supra)* was also considered by the High Court of Karnataka in MFA No. 5342 of 2010 (MV) order dated 05.07.2018 titled *Sri Sathish Kini vs. Smt. Jnaneshwari M.H.Nutan* wherein, in similar circumstances, the Court has held that



the judgment in *Lehru (Supra)* is complete answer to the contention of the insurance company and the insurance company may have a claim for contribution from the driver.

10. I am in respectful disagreement with the said judgment of the Madras High Court in *New India Assurance Co Ltd vs. Selvarajamani & Ors, 1998 ACJ 547* relied on by learned counsel appearing for the appellant. Said judgment does not consider the proposition as laid down by the Supreme Court in *Lehru (supra)* as to whether there is a willful breach on the part of the insured or not so as to entitle the insurer to avoid the liability.

11. Furthermore, if the proposition of the insurance company was accepted, it would militate against the very concept of a beneficial legislation for the victims of an accident. If such a finding were to be returned then the effect would be that even though a vehicle is insured but is stolen, not only would the insurance company be entitled to avoid its liability but the owner of the vehicle who has insured his vehicle against theft and accident would be saddled with a liability for no fault of his. Alternatively, the claimants would be left without any remedy to seek compensation.

12. In view of the judgment of the Supreme Court in *Lehru (supra)*, which lays down that unless the insurance company is able to show that there is a willful breach of the policy on the part of the insured, insurance company cannot avoid its liability.

13. In the instant case, Tribunal has found that the vehicle was



stolen and there was no willful breach of the terms and conditions of the insurance policy by the insured.

14. Accordingly, I find no infirmity in impugned award whereby the Tribunal has directed the insurance company to make the payment of the compensation amount and thereafter recover the same from the driver Niraj @ Mika who had stolen the vehicle.

15. I find no infirmity in the impugned award.

16. The appeal is accordingly dismissed.

17. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J.

JANUARY 17, 2022

rk