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

+ **MAC.APP. 254/2018 & CM APPL. 9027/2018**

ORIENTAL INSURANCE CO LTDAppellant

Through: Mr. Pankaj Seth, Advocate.

versus

SATYA PARKASH & ORS

.....Respondents

Through: Mr. Rakesh Kumar, Adv. for R- 1 and
R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

03.12.2024

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1. The present Appeal under *Section 173* of the *Motor Vehicles Act*, 1988 has been filed on behalf of the Insurance Company against an Award dated 15.11.2017 vide which compensation in the sum of Rs.4,90,000/- along with interest @ 9% per annum has been granted to the Respondent Claimants under *Section 163A* of the *Motor Vehicle Act*.

2. The Insurance Company has assailed the Award on the following two grounds:-

I. that the Petition has been filed under *Section 163A* of the *Motor Vehicles Act* was not maintainable, the income of the deceased was claimed to be Rs.7000/- per month, while the Petition under *Section 163A* is maintainable only where the income is Rs. 40,000/- or below;

II. that as per the case of the Claimants themselves the deceased was changing the tyre of his car when he got hit by



some vehicle which fled away from the scene of accident and there was no involvement of the Motor Vehicle of the deceased which is insured with the Insurance Company and, therefore, it has no liability to pay the compensation.

3. Learned Counsel on behalf of the Claimants has argued that an Application under Order VII Rule 11 CPC had been filed on behalf of the Insurance Company wherein same issue of there being no involvement of the vehicle was taken, but the same has been dismissed *vide* Order dated 25.03.2017 by the learned Tribunal. It is further submitted that the income of the deceased has been taken as Rs.40,000/- in accordance with *Section 163A* of the Act. There is no infirmity in the impugned Award and the Appeal is liable to be dismissed.

4. **Submissions Heard.**

5. Brief facts are that the deceased Udhal Singh was an employee of Respondent No. 3, Mr. Mohit Gupta and was driving his vehicle bearing No. DL-1LL-0866 (goods carrier Tempo) on 09.09.2009. At about 11 PM the vehicle got punctured and the deceased got out of the vehicle to change the puncture with the help of his helper. In the meanwhile, one Tempo TATA 407 hit the deceased because of which he sustained injuries. He was admitted to *Babu Jagjivan Ram Hospital* where the doctors declared him “Brought Dead”.

6. The Claimants filed the Claim Petition under *Section 163A* Motor Vehicle Act against its own vehicle as it was a “Hit and Run case”, the identity of the offending Tempo TATA 407 could not be identified. It is evident that the accident occurred while the deceased was changing the tyre of his own vehicle.



7. The **first objection** of the Insurance Company is that since there was no involvement of the vehicle insured with the Appellant in the accident, the Insurance Company cannot be held liable for payment of compensation.

8. It has been held in the case of **2009(4) Civil LJ 382(405)** and in **2009(2) Guj. LR 1348 (2011)** that the Tribunal has a jurisdiction to decide the Claim Petition under Section 163A of the Act irrespective of the fact that the vehicle was stationary, as the language used is “*where accident occurred “by use” of vehicle under Motor Vehicle Act. The use of vehicle covers driven, repaired, parked, kept stationary or left in unattended condition. The fact that the vehicle was stationary is immaterial*”. Similar observations have been made in a catena of judgments like Mangilal Kale v. M.P. State Road Transport Corporation [1988 ACJ 460 (MP)], and Oriental Fire and General Insurance Co. Ltd. v. Gangabai [1992 ACJ 106 (MP)].

9. In Pushpa Rani Chopra v. Anokha Singh, 1975 ACJ 396 (Delhi), a truck was stationary as its axle had broken down, and it was parked with its left front wheel on the kacha road and rear of the truck covered about nine feet of one side of the road. The deceased was riding a motorcycle with his daughter at the pillion seat and his son on the front. It was a dark night and there was no street light on the road. The motorcycle of the deceased dashed against the rear of the stationary truck and got under the truck with the result the deceased along with two children died on the spot. It was observed that the expression is, therefore, employed in a wide sense and is practically synonymous with bringing out a motor vehicle in a public place, and using the public place for the motor vehicle, irrespective of the fact whether it was stationary or not.

10. It is evident that there was involvement of the vehicle in the present



case. The deceased was changing the tyre of his vehicle and he died on account of its involvement in a road accident. The learned Tribunal has thus, rightly concluded that the Claim Petition under Section 163A of the Motor Vehicle Act, was maintainable.

11. The **second ground** which is being taken is that as per the Claim Petition itself, the deceased was having an income of Rs.7000/- per month which is much more than Rs.40,000/- per annum, which is the threshold for the Petition under Section 163A of the Motor Vehicle Act.

12. Even though the Claimant may have claimed the salary of the deceased to be Rs.7000/- per month, but it was only an averment which was neither supported by any document nor proved in the Court. The learned Tribunal thus, rightly took the salary of the deceased as Rs.40,000/- per annum and granted the compensation under Section 163A of the Motor Vehicle Act.

13. There is no merit in the present Appeal which is hereby dismissed.

14. The statutory amount be returned to the Appellant in accordance with Rules.

NEENA BANSAL KRISHNA, J

DECEMBER 3, 2024

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