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

\+ MAC.APP. 757/2015 & CM APPL. 61988/2023

MUNNA KHAN .....Appellant
Through: Mohd. Rais Farooqui, Advocate.

versus

SAHEED KHAN & ORS (ICICI LOMBARD GENERAL INSURANCE CO LTD) .....Respondent
Through: Mr. Anshuman Bal, Advocate for R-1 & 2.
Mr. Pradeep Gaur, Mr. Amit Gaur and Ms. Sweta Sinha, Advs. for R-4.
Mr. A.K. Soni and Mr. Pavan Kumar Vashishth, Advocates for R-5.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R
% **18.10.2024**

1) Appeal under Section 173 of the Motor Vehicle Act has been filed by the appellant/owner of one of the offending vehicles to challenge the Award dated 12.11.2014 whereby the learned Tribunal has allowed the Petition and granted the Compensation in the sum of Rs. 4,84,510/- with interest @ 9% per annum with further direction that the opposite party Nos.2 & 3/driver and owner of Tempo Vehicle No. UP-22T-0569 each shall pay 50% of the compensation amount along with 9% interest, to the claimants.

2) It is submitted that there were two vehicles involved in the accident, one being a truck bearing Registration No.UP-21N-4822

which was being driven by its driver, Sh. Mhure Khan in a rash and negligent manner resulting in the death of Aizaz Ahmad. The truck was insured with United India Insurance Company Ltd i.e. respondent No.4 at the time of the accident. FIR under Section 279/337/338 IPC was registered, however, a Claim Petition under Motor Vehicle Act was filed by respondent Nos.1 & 2, Mr. Saheed Khan and Ms. Jaida Begum vide Petition No.1196/2010 before the Tribunal. United Indian Insurance Company Ltd, respondent No.4 had filed the Written Statement. Respondent No.5/ICICI Lombard General Insurance Co. Ltd with which second Vehicle No. UP-22T-0569 was alleged to be insured, had also filed the Written Statement.

3) In the aforesaid judgment, both the vehicles were held to be negligent compositely and 50% compensation was directed to be shared by the owner of the truck as well as the Insurance Company of the second vehicle/Tempo.

4) The Award has been challenged on the ground that the accident had occurred due to the negligence of the driver of the Truck. There is no conclusion/finding that the driver of the Tempo vehicle was negligent in contributing to the accident. There was no eye witness examined by the claimant. These facts have been completely overlooked. The petitioner/owner of the Tempo is a poor and a weak person and has dependant children and is not in a position to pay the compensation amount. Hence, the prayer is made that the Award be set aside.

5) The learned counsel on behalf of **ICICI Lombard General Insurance Co. Ltd/Respondent No.5** has submitted that the learned

Tribunal in detail has given a finding that there was no valid Insurance of the Tempo on the date of accident i.e. 02.05.2009. There is no other evidence produced by the owner of the Tempo to show that it had a valid Insurance on the date of accident. Furthermore, this has not been agitated as a ground to challenge the impugned Award. There being no valid Insurance of the Tempo, the judgment has been rightly delivered against the owner of the tempo, who has been held liable to pay 50% of the compensation.

6) Learned counsel on behalf of **United India Insurance Co. Ltd/Respondent No.4** has submitted that it is a settled law that in the cases of composite negligence, even though compensation to the Claimants may be paid by the Insurance Company of one vehicle, it has a right to recover the proportionate compensation from the owner/Insurance of the other offending vehicle.

7) **Submissions Heard**.

8) Essentially, the appellant, Munna Khan who is the owner of the Tempo, the second vehicle involved in the accident, has claimed that though the money had been given to the agent of the Insurance Company prior to the date of accident for renewal of the Insurance Policy, the same was delayed by the Agent and the Insurance cover came to be renewed after the accident.

9) It is further asserted that there was no negligence on the part of the owner of the Tempo and the Insurance Company cannot be exonerated of its liability to pay the compensation.

10) This aspect has been dealt with in detail in the impugned Award. It has been found that there was no valid insurance at the time

of accident and thus the liability to pay the compensation has been fastened on the owner of the Tempo vehicle. There is no infirmity in the findings of the learned Tribunal and do not call for any interference.

11) **The second aspect** on which the Award has been challenged is that there is no finding about the Tempo being negligent. However, in the judgment it has been observed that accident occurred due to the collusion between the two vehicles. Even though there was no eye witness to the accident, but the statements of the witnesses and the documentary evidence was considered to hold that there was composite negligence of both the vehicles.

Conclusion

12) There is no merit in the present Appeal which is hereby dismissed. In so far as the submissions of Respondent No.4, United India Insurance Co. Ltd are concerned, it is a settled law that in the case of composite negligence, the complainant has a right to recover the entire/complete compensation from either or both the vehicles but the owner/Insurance Company of the offending vehicle is entitled to recover the Proportionate compensation amount from the other Insurance Company/the owner of the offending vehicle.

13) The Appeal has no merit and stands dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 18, 2024

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