



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

% **Judgment reserved on : 29th January, 2024**
Judgment pronounced on : 13th March, 2024

+ **MAC.APP. 1107/2017 & CM APPL. 45965/2017**

HDFC ERGO GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

SEEMA & ORS.

..... Respondents

**Through: Ms. Sarika Goel, Advocae for
R-4 and R-5.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The instant appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 ¹ assailing the judgment-cum-award dated 18.09.2017 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi² in MAC Petition No. 5134/16 titled 'Smt. Seema Vs. Sh. Prem Singh', whereby the learned MACT allowed the claim petition and awarded a compensation of Rs.14,48,000/- along with interest @ 9% p.a. w.e.f. date of filing of petition till the date of its realization, in favour of the respondents No.1, 2 and 3 i.e. LRs./three daughters³ of the deceased Ms. Pinki (hereinafter referred to as the 'claimants').

¹ The M.V. Act

² MACT

³ There was a 4th daughter who died during the proceedings on 29.05.2017.



2. Further, the appellant and respondents no. 4 and 5 herein, who are the driver and registered owner of the offending vehicle respectively, have been made jointly and severally liable to pay the compensation and the liability has been fastened upon appellant/HDFC ERGO General Insurance Company Ltd, being the insurance company, to deposit the award amount.

BRIEF FACTS

3. Shorn of unnecessary details, Ms. Pinki aged 39 years old and a homemaker, was involved in a motor accident on 03.09.2011 when she was hit by the TATA Tempo 709 bearing No. HR-38C-2182⁴, owned by Sh. Sanjay Yadav i.e., respondent No. 5, being driven by Sh. Prem Singh Yadav respondent No. 4 (who were arrayed as respondent No. 2 and 1 in the claim petition respectively before the learned MACT). The said vehicle was evidently insured with the appellant/insurance company *vide* Policy No. 2315200127545800000 having validity from 02.09.2011 to 01.09.2012.

4. Suffice to state that the victim woman succumbed to her injuries on the same day, even before she could be taken to the hospital. The claimants instituted the claim petition on 02.12.2011 under Section 166 read with Section 140 of the M.V. Act seeking compensation under various heads.

PROCEEDINGS BEFORE THE LEARNED MACT

5. The Learned MACT *vide* the impugned judgment decided issue No. 1 in favour of the claimants regarding factum of accident and culpability of the driver of the offending vehicle. Further, the

⁴ Offending Vehicle



claimants were made entitled to compensation with interest as mentioned above.

6. It is pertinent to mention that the appellant/insurance company had contested the liability being fastened upon it and argued that it could not be made liable to pay the said compensation on the ground that there was a fundamental breach of the insurance policy by the owner and the driver of the offending vehicle in a manner that the accident occurred in Delhi while the offending vehicle was licensed to operate only in the State of Haryana, thus implying that the vehicle was not in Haryana at the time of accident. It was urged that the terms of the policy were therefore breached, hence absolving the insurance company of any liability.

7. The Learned MACT, while adjudicating on the said contention, considered the testimony of Sh. Suresh Thakur, Proprietor of Suresh Body Builders, Sanjay Gandhi Transport Nagar, Delhi as R-2/W-1, who testified that repairs were done on the offending vehicle, and it was on the date of accident when the same was returned to the driver and its owner. The learned Tribunal held that testimony of R-2/W-1 goes onto substantiate the plea of the driver and owner that they were taking the offending vehicle back to Haryana after its repair on the said date and it was not being used to ply passengers in Delhi or operating outside Haryana on the unfortunate day of the accident.

8. The Learned MACT *vide* paragraph (42) of its order denied the contention raised by the insurance company and held as under: -

“...I am of the considered opinion that the insurance company has failed to prove its plea regarding breach of terms and conditions of insurance policy on the part of insured/R2. It has been established



on record that the offending vehicle was being taken back to State of Haryana after its repair from the Mechanic Shop situated in the area of S.P Badli, while it had caused the accident in question. Same does not constitute breach of terms and conditions of the insurance policy. Hence, insurance company continues to remain liable to pay the compensation amount as determined above...”

(Paragraph 42)

GROUND FOR APPEAL

9. Aggrieved by this observation of the Learned MACT, the insurance company has filed the present appeal re-stating that it should be absolved of the liability to pay the compensation in light of the alleged fundamental breach of the terms of the policy by the driver and the owner of the offending vehicle.

10. In his written submissions, respondent No. 5/owner of the offending vehicle has reiterated the plea taken before the learned Tribunal and *inter alia* it is urged that the route permit violation is not a defence under Section 150(2) of the M.V. Act because the defence available to the insurance company is in respect of a ‘permit’ and not a ‘route permit’.

ANALYSIS AND DECISION

11. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties. I have also perused the relevant record in the present appeal as also the digitized Trial Court record.

12. First things first, there is no challenge to the findings given by learned Tribunal believing the truthfulness of the testimony of R-2/W-1, Suresh Thakur that the offending vehicle had been brought to Sanjay Gandhi Transport Nagar for repairs and on the date of



accident, it was handed over to the driver of the offending vehicle. The said version corroborates the testimony of Shri Prem Singh/driver of the offending vehicle examined as R-1/W-1 wherein he deposes that the offending vehicle was being taken back to Sonipat, Haryana after completion of repairs. It is pertinent to mention here that Sanjay Gandhi Transport Nagar is located on Sher Shah Suri Marg, National Highway No.1 near Singhu border, which is at the inter-section of the State of Delhi and the State of Haryana, and stretches approximately 10-15 kms in distance. Much mileage was sought to be taken by learned counsel for the appellant/Insurance Company that if the version of R-1/W-1 is believed, the offending bus was rather parked at the house of the owner. I am afraid the testimony of R-1/W-1 does not say so and what he testified was that it was only after expiry of the permit that the bus was parked at the residence of the owner in Delhi. In any case, as on the date of accident, what is brought to the fore is that the offending bus was being driven back towards Singhu border adjoining the district of Sonipat, State of Haryana after having necessary mechanical repairs.

13. The main plank of the argument advanced by the learned counsel for the appellant/Insurance Company was that there was violation of the permit condition. It would be apposite to refer to Sections 2(28) and 2(31) of the M.V. Act, which are reproduced below: -

“2. (28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a



trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

(31) “**permit**” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;...”

14. Without further ado, on perusal of Section 66 (3) (p) of the M.V. Act, it is manifest that where a transport vehicle is empty and proceeding to any place for purpose of repairs, then the provisions of Section 66(1) and (2) of the M.V. Act shall not apply. It is apt to note here that sub-section (3) of Section 66 of the M.V. Act carves out certain exceptions to sub-section (1). The relevant part of sub-section (3) is extracted below: -

“66. Necessity for Permits.

(1) ...

(2) ...

(3) The provisions of sub-section (1) shall not apply—

(a) to (o) - not relevant

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.”

{bold emphasis}

15. On a conjoint reading of the aforesaid definitions and Section 66 (3) (p) of the M.V. Act, it is quite clear that a permit has to be issued by the Competent Authority under the M.V. Act for use of a motor vehicle as a transport vehicle. The emphasis is on the words “use” as well as “transport vehicle”. Section 2(47) of the M.V. Act states that “transport vehicle” means ‘a public service vehicle, a goods



carriage’, an educational institution bus or a private service vehicle. Section 66 of the M.V. Act stipulates the necessity for permits. Sub-section (1) of Section 66 of the M.V. Act provides that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed Authority. Various provisos have been appended to the main provision stipulating conditions for use of the vehicle and purpose of carriage of goods vehicle. Sub-section (2) of Section 66 of the M.V. Act states that the holder of a goods carriage permit may use the vehicle for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed. It is necessary to mention here that a proviso has been added by Act 54 of 1994 with effect from 14-11-1994 allowing the holder of a permit of any articulated vehicle to use the prime-mover of that articulated vehicle for any other semi-trailer. Section 2(2) defines “articulated vehicle” to mean a motor vehicle to which a semi-trailer is attached.

16. A distinction also has to be made between “route permit” and “permit” in the context of Section 150 of the M.V. Act. Sub-section (2) of Section 150 of the M.V. Act provides the grounds that can be taken as defence by the insurer. It enables the insurer to defend on the ground that there has been breach of a specific condition of the policy, namely, (i) a condition that excludes the use of the vehicle — (a) for hire or reward, where the vehicle is, on the date of the contract of



insurance, a vehicle not covered by a permit to ply for hire or reward, or (b) for organised racing and speed testing, or (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or (d) without side-car being attached where the vehicle is a two wheeled vehicle. That apart, it also entitles the insurer to raise the issue pertaining to a condition that excludes driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or that excludes liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion. A further defence that can be availed by the insurer is that the policy is void on the ground that it has been obtained by non-disclosure of a material fact or by representation of any fact which is false in some material particular.

17. It is pertinent to mention here that it is in evidence that the offending vehicle was being plied without any passenger. That position has not been disputed by the learned counsel for the appellant/insurance company. It was sought to be urged that the word 'proceeding' in Section 66 (3) (p) of the M.V. Act only contemplates the course of time when the vehicle is going for repairs and it is only then that the exemption for the need of having a valid permit would be dispensed with, which plea I am afraid belies common sense. The simple dictionary meaning of the word 'proceeding' is an 'event' or 'series of activities involving a set of procedures', 'happenings' and so on. It could not be the intention of the legislature that once repairs are done on a vehicle, the exemption would not apply, because if such an



interpretation is afforded to the entire provision, Section 66 (3) (p) of the M.V. Act will be rendered otiose. The process of repairs could only be said to be completed when the vehicle is taken to a workshop for purpose of repairs or maintenance work is done and it is brought to the place which allows it to be plied with or without passengers as per the permit condition.

18. In view of the foregoing discussion, the plea that the offending vehicle was being plied in violation of permit conditions cannot be sustained in law. Hence, the appellant/insurance company is not entitled to recovery rights towards amount of compensation that has been paid or would be payable to the claimants.

QUANTUM OF COMPENSATION

19. At this juncture, this Court *suo moto* in exercise of its powers shall unhesitatingly enhance the quantum of compensation in the present case. It is but necessary that the claimants who were the four daughters of the deceased and the deceased herself was evidently a homemaker, should be awarded just and reasonable compensation. The deceased was about 39 years of age and she had been maintaining the well-being of her four daughters, out of which only one was an adult at the time of the accident, and unfortunately during the course of the proceedings one of the daughters died on 29.05.2017. There is no gainsaying that the value of services rendered by a mother and a homemaker cannot be measured in pecuniary terms. Her loss to the



hapless daughters should be compensated in a just and reasonable manner.⁵

20. What the learned Trial Court has done is that in the absence of any tangible evidence on record, it assumed that the notional income of the deceased could be reckoned in terms of the minimum wages for an unskilled workman applicable in Delhi and thereby assessed monthly income @ Rs.7,098/-. There is no gainsaying that the scales of minimum wages that are provided for various categories of workmen are such that do not have a co-relation with the age, experience and competency of the individual concerned.

21. At the cost of repetition, in the face of the fact that the deceased was maintaining her four daughters, it would be reasonable to assume that she in all probabilities was earning and spending something more than the minimum wages so as to provide for a comfortable living and well-being of herself and her daughters, and therefore, bearing in mind the state of the social and economic conditions prevalent in the year 2011, it would be fair to assume that she would be earning at least a minimum amount of Rs.10,000/- p.m. The notional income thus comes to Rs.10,000/- x 12 = Rs.1,20,000/-, 25% is to be added towards loss of future prospects in life and that amounts to Rs.30,000/-. Thus, the total financial income would be Rs.1,50,000/-; from which a deduction of 1/4th is to be made towards personal use and living expenses of the deceased.

22. Hence, the total loss of financial dependency is calculated at Rs.1,12,500/- to which multiplier of 15 is applied and the total

⁵ Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors. (2012 ACJ 721)



compensation, therefore, would come to Rs.16,87,500/-. Rs.40,000/- to each of the three surviving daughters is to be awarded towards loss of love and affection/consortium besides Rs.25,000/- towards reimbursement of expenses towards financial and last rites and Rs.15,000/- is awarded for loss of estate. The total compensation is accordingly worked out as under: -

Computation of Compensation

S. No.	Particular Heads	Amount (in Rs.)
1.	Annual Income	1,20,000
2.	Loss of future prospects @ 25%	30,000
3.	Deduction towards personal use and living expenses of the deceased @ 1/4 th	37,500
4.	Multiplier	15
	Total loss of dependency (A)	16,87,500
5.	Loss of love and affection/consortium (B)	1,20,000
6.	Loss of estate (C)	15,000
7.	Reimbursement of financial/last rites (D)	25,000
	Total Compensation (A)+(B)+(C)+(D)	18,47,500

23. In view of foregoing discussion, the appellant/insurance company is denied recovery rights as against respondent No.5/registered owner of the offending vehicle. Further, the amount of compensation is *suo moto* enhanced in the present appeal from Rs. 14,48,000/- to Rs.18,47,500/-.

24. Having regard to the long innings that have been played in the Courts, it would be but fair that the claimants shall also be entitled to interest @ 9% p.a. from the date of filing of the petition till realization. As recorded in the order of this Court dated 23.02.2018, Rs. 18,70,784/- including accrued interest has already been deposited with the Registrar General of this Court and *vide* order dated



25.02.2020 the appellant was directed to deposit the balance amount with up-to-date interest with the same authority. The amount of compensation deposited, and the balance due be released to respondents No.1 to 3, who are the claimants in equal shares as per the direction of the learned Tribunal, with interest accrued within four weeks from today failing which, the appellant/insurance company shall be liable to pay interest @ 12% p.a. from the date of this judgment till realisation.

25. The present appeal along with pending application stands disposed of.

DHARMESH SHARMA, J.

MARCH 13, 2024/ck