(2018) 09 DEL CK 0356

In the Delhi High Court

Case No : Mac.App. 754, 756, 762, 764 Of 2017, Cm 30226 Of 2017

Chadha Brothers & Ors APPELLANT

Vs

Neeraj & Ors. (New India Assurance Co. Ltd) RESPONDENT

Date of Decision : 27-09-2018

Acts Referred:

Citation : (2018) 09 DEL CK 0356

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

SUNIL GAUR, J

1. The above captioned four appeals relate to a vehicular accident which took place on 20th May, 2011 in which Deepak and Rameshwar had

sustained fatal injuries while Neeraj and Shivraj had suffered grievous injuries. Vide separate Awards of even date i.e. 11th May, 2017, compensation

has been granted to the respondents-Claimants and Injured by the Motor Accident Claims Tribunal (hereinafter referred to as the â??Tribunalâ??). Â

2. With the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being decided by this

common judgment.

3. In the above captioned first appeal, the challenge is to impugned Award, vide which the Tribunal has granted compensation of ☐ 1,57,931/- with

interest @ 9% p.a. to respondent/Injured-Neeraj on account of grievous injury sustained by him in this vehicular accident. In the above captioned

second appeal, the challenge is to grant of compensation of ☐ 76,993/- with interest @ 9% p.a. by the Tribunal to respondent/InjuredShivraj on account of the injuries sustained by him in this accident. The above captioned third appeal questions impugned Award vide which compensation of ☐ 13,61,944/-

with interest @ 9% p.a. has been granted by the Tribunal to legal heirs of Deepak on account of fatal injuries sustained by him in this vehicular

accident. In the above captioned fourth appeal, the challenge is to grant compensation of ☐ 11,59,768/- with interest @ 9% p.a. by the Tribunal to legal

heirs of Rameshwar, who had died due to injuries sustained in this accident.

4. The factual background of these appeals, as noticed in the impugned Award, is as under :-

â??As per the case of petitioner, on 20.05.2011 at about 3:15 PM petitioner Neeraj was sitting in the vehicle bearing registration No. UP 12T 4797

(Swaraj Mazda) being the helper and Late Deepak was driving the vehicle and other helpers Shivraj & Rameshwar were also travelling as helpers.

When their vehicle reached at Dhola Mazra Power House, G.T. Road, Near Shahabad, Distt. Kurukshetra, Haryana, a gas tanker bearing registration

No. HR 29GA 3111 which was going ahead of victims? vehicle driven by respondent no. 1 Rajinder in a rash and negligent manner suddenly applied

the emergency brakes. As a result thereof victims? vehicle hit against the same and overturned. All the occupants of Swaraj Mazda sustained injuries

and they were rushed to CHC Hospital, Shahbad, Haryana, where his MLC was prepared. FIR No. 141/11 U/s 279/337/304A IPC was registered at

PS Shahbad, Distt. Kurukshetra, Haryana. Respondent No. 1 was drvier, respondent no. 2/owner and respondent no. 3/ the insurer of the offending

vehicle.â??

5. To render the impugned Award, the Tribunal has relied upon evidence of legal heirs of deceased and Injured persons and the other evidence on

record. On the strength of evidence recorded, impugned Award has been rendered.

6. Learned counsel for appellant-Owner of the insured tanker in question, assails the impugned award on the liability aspect. It is submitted that merely

because there was no endorsement on the driving licence of Rajinder to the effect that he was permitted to drive hazardous vehicle, would not justify

putting of liability upon the appellant. It is submitted that Mohd. Shabir was the driver and Rajinder was the Assistant Driver and that after this

accident, main driver-Mohd. Shabir had left the job and he is not traceable.

Reliance is placed upon Supreme Courtâ??s decisions in S.Iyyapan

versus United India Insurance Company Limited & Anr. (2013) 7 SCC 62 and Kulwant Singh & Others versus Oriental Insurance Company Limited

(2015) 2 SCC 186 to submit that the liability to pay the awarded compensation is of respondentâ?"The New India Assurance Company Limited

(hereinafter referred to as â??the Insurer?) and not of appellant-Owner of the Insured vehicle.

7. On the contrary, learned counsel for the respondent-Insurer supports the impugned award and submits that there is no infirmity in the impugned

Award and so, these appeals deserve to be dismissed. Despite service, there is no representation on behalf of driver-Rajinder of the insured vehicle.

In view thereof, acquittal of driver-Rajinder by the Criminal Court is not being gone into.

8. Upon hearing and on perusal of the impugned Award, evidence on record and the decisions cited, I find that the driver of the insured vehicle was

not having the endorsement to the effect that he is authorized to ply vehicle carrying hazardous goods. On scrutiny of evidence of appellantâ??s

witnessâ?"Sh. S.K.Chadha (R2W-1), I find that there is no crossexamination of the witness on this aspect. Had there been any crossexamination of

this witness (R2W-1) on this aspect, then the plea of driving licence of the driver of the insured vehicle could be considered. Due to lack of evidence

on this aspect, the Tribunal was not justified in granting recovery rights to respondent-Insurer against the appellantOwner. Solitary statement of

witness Suraj Bhan Sharma (R3W1) from the concerned licensing authority regarding there being no endorsement on the driving license of driver-

Rajinder permitting to ply vehicle carrying hazardous goods, is of no consequence unless the said plea is put to the owner of the insured vehicle. Â

9. So far as quantum of compensation awarded by the Tribunal is concerned, there is no challenge to it and rightly so, I find that the compensation

granted to the respondents-Claimants is just and proper.

10. In the considered opinion of this Court, at best, recovery rights granted by the Tribunal to respondentâ?"Insurer shall hold good qua the driver of

the insured vehicle and not against appellant-Owner. Consequently, impugned Awards are modified to the extent of denying recovery rights to

respondentâ?"Insurer qua the appellant-Owner.

11. While modifying the impugned Awards to the aforesaid extent, the above-captioned four appeals and the application are accordingly disposed of.

