

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

SUBJECT : Motor Vehicles Act, 1988

MAC App. No.114 of 2007

Judgment reserved on: 17th November, 2008

Judgment delivered on: 1st December, 2008

M/s New India Assurance Co.Ltd.  
D.R.O.-II, 12/1, Jeevan Raksha Bldg,  
Asaf Ali Road, New Delhi.

Through: .Appellant  
Mr.D.K.Sharma, Adv.

Versus

1. Smt.Seema  
Widow of late Sh.Janved, Alias Raju,
2. Ms.Aarti  
D/o late Sh.Janved, Alias Raju (aged about 5 years minor)
3. Ms.Manju (minor)  
D/o Late Sh.Janved (aged about 3 years)  
(Minors through their mother and natural guardian  
Smt.Seema, Respondent No.1)  
All r/o C-147,  
Laxmi Park, Gali Bhootonwali,  
Nangloi, Delhi-110041.  
Permanent address;-  
VillageSimrahi,  
P.S.Kheda, Tehsil Bahat,  
District Agra, U.P.
4. Shri Krishan Kumar alias Babloo,  
s/o Sh.Tek Ram  
R/o village Meham,  
Mohalla Dherpana, Ward No.2,  
Prajapat, District Rohtak,  
Haryana,  
And also at Narain Dharam Kanta,  
Care of Dahiya House,  
Adhyapak Nagar, Nangloi,  
Delhi-110041.

5. Shri.Attar Singh,  
s/o Sh.Puran Singh
6. Pradeep  
s/o Sh.Ram Niwas
7. Ms.Bimla  
w/o Shri Ram Mehar,  
All R/o Vill. And P.O.Basana,  
Tehsil Kalanaur,  
Distt.Rohtak, Haryana.

Through: Respondents.  
Mr.S.N.Parashar, Adv. for R. 1 to 3.  
None for respondents 5, 7 and 8.

CORAM:

V.B.GUPTA, J.

1. Present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as Act) has been filed by the appellant-Insurance Company against the award dated 25th November, 2006 passed by Ms.Shail Jain, Judge, MACT, Delhi (for short as Tribunal).

2. The brief facts of this case are that on 14th June, 2004 at about 12 noon, at Red Light West Avenue Road, Punjabi Bagh, deceased Janved was sitting in vehicle bearing No.HR-12-F-7074 and was on duty for loading and unloading the malba from the vehicle and when vehicle reached on red light, the tractor jumped the red light and deceased asked respondent No.4 to drive slowly but the tractor became unbalanced and deceased fell down on the road from the tractor and came under the wheels of the tractor and expired on the spot.

3. The offending tractor is owned by respondents 5 to 7 and insured with the appellant. 4. The respondents contested the claim before the Tribunal and respondent No.1-driver filed the written statement stating that the deceased died due to his negligence and there is no negligence on his part. In fact deceased fell down on the road, while trying to board the moving trolley from behind unauthorisedly.

5. The respondents-owner also filed their written statement in which it is stated that deceased died due to his negligence and there is no negligence on the part of the driver of the tractor. In fact deceased fell down on the road while trying to board the moving trolley from behind unauthorisedly.

6. Appellant in its written statement took the plea that respondent-driver did not possess a valid and effective driving license and he was driving the offending vehicle without permission or consent of the owner. It is also stated that policy was issued only for tractor and premium was charged for driver only.

7. Vide impugned judgment, the Tribunal awarded compensation for a sum of Rs.4,70,000/- along with 6% interest, from the date of the filing of petition till realization in favour of the claimants.

8. It has been contended by learned counsel for appellant that respondents no. 4 to 7 admitted in their written statement that deceased was not their employee and he died due to his own negligence while trying to board the tractor, while in evidence, they admit that the deceased was their employee and was sitting over the tractor/trolley at the time of the alleged accident.

9. Other contention is that the deceased was only a gratuitous passenger at the time of the alleged accident and thus the claimants were not entitled to any compensation from the appellant. Even assuming that the deceased was an employee of respondents no.5 to 7, the appellant is under no liability to pay compensation because, the policy covered the driver only.

10. On the other hand, it is contended by learned counsel for respondents no.1 to 3 that there are four owners of the offending vehicle and the deceased was working as a labourer and was on duty at the time of the alleged accident.

11. Regarding this contention that the deceased was not an employee of the owners of the offending vehicle, this plea is liable to be rejected at the outset, since this defence was nowhere pleaded in the written statement filed by the appellant.

12. From averments made in the claim petition, the case of the claimants from the very beginning is that, the deceased was on duty for loading and unloading the Malba from the offending vehicle.

13. PW-1, Seema, the widow of deceased has stated that deceased used to work as a labourer and used to load and unload the debris with the help of the tractor. He was under the employment of the owner of the tractor, namely, Ram Niwas and was getting monthly salary of Rs.4,000/-.

14. In cross examination on behalf of owner, it was suggested to PW-1 Seema that her husband used to work on the alternate day. 15. This witness was not cross examined at all on behalf of appellant.

16. So, it stands established that deceased was employed with respondents 5 to 7, though working on alternate days.

17. R1W1, Sh. Krishan Kumar, driver of the offending vehicle in his testimony has stated that the deceased was working as an employee of the owner of the tractor.

18. In his cross-examination, he admitted that the deceased was a labourer and doing the job work of loading and unloading from tractor. Deceased was sitting on the tractor in the

capacity of employee of the owners of the tractor. He also stated that the salary of the deceased was made by the owners to the deceased in his presence.

19. R2W1, Sh. Pradeep Kumar, owner of the tractor admitted that at the time of accident, the deceased was his employee and was sitting on the tractor.

20. In his cross-examination, he clearly stated that the deceased was working with them prior to his death before 15 days and they paid him salary for the same.

21. Though the owners in their written statement have denied the factum of employment of the deceased, yet it is proved from the statements of R1W1 and R2W1 that the deceased was their employee.

22. Moreover, widow of deceased is categorical about this fact that her husband was under the employment of the owner of the tractor and as per statement of PW-2 constable Bhagwan Dass who is eyewitness as well as an independent witness in this case, deceased at the time of accident was sitting on the Malba of trolley and fell down due to this accident.

23. PW-2 was not all cross-examined on this point that deceased was not sitting on the trolley.

24. Thus, from the evidence on record it stands clearly proved that the deceased was travelling in the tractor as an employee of the owners of the tractor and not as a gratuitous passenger at the time of accident.

25. No other ground has been pleaded in this appeal.

26. Thus, I do not find any illegality or infirmity in the impugned judgment of the Tribunal.

27. Hence, the present appeal is dismissed.

28. No order as to costs.

29. Trial Court record be sent back.

December 01, 2008

Sd/-  
V.B.GUPTA, J.