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

Date of Decision: 31.10.2014

+ MAC.APP. 103/2008

UNITED INDIA INSURANCE CO.LTD. Appellant

versus

RAJENDER KUMAR & ORS. Respondents

+ MAC.APP. 104/2008

UNITED INDIA INSURANCE CO.LTD. Appellant

versus

JAWAHAR SINGH & ORS. Respondents

+ MAC.APP. 105/2008

UNITED INDIA INSURANCE CO LTD Appellant

versus

ANJU & ORS Respondents

+ MAC.APP. 108/2008

UNITED INDIA INSURANCE CO LTD Appellant

versus

MADHU & ORS Respondents

+ MAC.APP. 114/2008

UNITED INDIA INSURANCE CO LTD Appellant
versus

AMRESH & ORS Respondents

+ MAC.APP. 115/2008

UNITED INDIA INSURANCE CO.LTD. Appellant
versus

HARSH & ORS. Respondents

+ MAC.APP. 116/2008

UNITED INDIA INSURANCE CO. LTD. Appellant
versus

RAJENDER KUAMR & ORS. Respondent

+ MAC.APP. 117/2008

UNITED INDIA INSURANCE CO.LTD. Appellant
versus

RAJENDER KUMAR & ORS. Respondents

Appearance:-

Mr.K.L.Nandwani, Advocate for Insurance Company
Mr.Deepender Hooda, Proxy Counsel for Mr.Arvind Chaudhary, Advocate for
R-1 in all appeals.
Mr.Purshotam Singh, Advocate for Mr.Jagat Singh.

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J. (ORAL)

1. These appeals are filed by the appellant Insurance Company and all raise a common issue.

2. The brief facts giving rise to the claim petitions are that on 17.01.2004 the claimants were all travelling together and coming back to Delhi after attending a marriage function at Khatauli. They were all travelling in a Tata Sumo car said to be borrowed by Amresh from his friend Manish Bhalla. It is said that the driver of the said Tata Sumo was driving in a very rash and negligent manner and did not pay any heed to the request of the passengers to drive carefully. He lost control of the vehicle and smashed it with a big tree on the left side. As a result of forceful impact, three persons, namely, Master Ravinshu, Kumari Swati and Kumari Shivani lost their lives and other persons namely, Amresh, Rajender Kumar, Harsh, Smt. Anju and Smt. Madhu suffered bodily injuries.

3. Learned counsel appearing for the appellant Insurance Company strenuously urges that the Tata Sumo car was registered with RTO as a private vehicle and was also insured with the appellant Company as a private vehicle yet it was being used as a taxi for hire purpose which was contrary to the terms and conditions of the Insurance Policy. Hence, learned counsel submits that the appellant Insurance Company is not responsible or liable to pay any amount of compensation and the owner and the driver of the offending vehicle are the ones who are liable to pay.

4. Eight separate claim petitions were filed. By the present eight appeals

the appellant Insurance Company seeks to impugn the Award dated 12.12.2007. A perusal of the Award shows that the contentions now being raised by the appellant Insurance Company appear to have been neither argued nor raised before the Tribunal. The Tribunal has rendered no findings on this issue whatsoever and has directed the appellant Insurance Company to deposit the award amount along with interest. I am also told at the bar that the parties have already recovered the full amount by means of an execution petition and have received the full compensation.

5. The Award also reveals that the Insurance Company did not lead any evidence. For the respondents only the owner of the vehicle, Manish Bhalla who was respondent No.4 before the Tribunal has led his evidence as R4W1.

6. The evidence of Sh. Manish Bhalla R4W1 shows that in his affidavit by way of evidence he has stated that Amresh is his friend who borrowed the offending vehicle from him for purpose of attending a marriage along with his family members. He has further said that he provided Amresh with an experienced driver. In his cross-examination he has stated that Amresh was his long time friend and being a friend he had given the vehicle to Amresh for 2-3 days to attend a marriage in his family. He states that the vehicle is a private vehicle and he had given the same to the Amresh without any consideration. Relevant portion of his cross-examination reads as follows:-

“Amrsh is my friend for a long time. Being a friend I had given my vehicle to Amrsh for two/three days to attend a marriage in his family. The vehicle is a private vehicle. I had given the vehicle to Amrsh without any consideration.

7. Similarly, PW-6 i.e. Amresh in his affidavit by way of evidence has stated that he borrowed the offending vehicle from his friend Manish Bhalla.

There is no cross-examination done of his on this statement.

8. PW-1 has also made a similar statement in his affidavit by way of evidence. PW-1 Sh. Rajender Kumar has also stated that the offending vehicle was borrowed by his sister's son Amresh from his friend Manish Bhalla. He was cross-examined in detail. He has denied that he was going as a paid passenger in the said Tata Sumo. He has also denied that he was travelling as a passenger after hiring the vehicle.

9. In the light of the above evidence, it is clear that there is no evidence led by the appellant to show that the offending vehicle was being used as a taxi or was used on hire by the passengers travelling in the same. Witness after witness deposed that the vehicle was borrowed from the owner on account of the friendship of Manish Bhalla, R4W1 and Amresh PW6 . Further, this submission has not been made before the Tribunal. Hence the contention has neither been argued nor proved before the Tribunal. There is clearly no merit in the submissions of the appellant. These appeals are accordingly dismissed.

10. Statutory amount, if any, paid by the appellant Insurance Company at the time of filing of the appeal may be refunded.

11. All pending applications stand dismissed.

JAYANT NATH, J

OCTOBER 31, 2014

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