

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No.674/2007

Judgment delivered on: November 30 ,2007

United India Insurance Co. Ltd. Appellant
Through: Mr.L.K. Tyagi, Advocate.

versus

Sayyada Begum & Ors. Respondents

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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Counsel for the appellant contends that the Tribunal has entertained the petition under Section 163A of the Motor Vehicles Act in a case of simple murder. Trying to distinguish the

judgment of **Smt. Rita Devi Vs. New India Assurance Co. Ltd. & Anr.**, reported in *2001 ACJ 801*, counsel contends that during the course of the duty, the passengers had decided to commit an act of felony to steal the auto rickshaw and in the course of achieving the said objective, they eliminated the driver of the auto rickshaw. The contention of the counsel is that the facts of the case in hand are distinguishable as no such case was set up by the claimants that there was any kind of lifting of the offending vehicle by the criminals. The contention raised by the appellant is that since it is a case of death of driver himself, therefore, he cannot be considered to be a third party.

I have heard learned counsel for the appellant at considerable length and have perused the records.

Perusal of the award shows that FIR against the accused person was registered under Section 394 IPC. Section 394 IPC deals with an offence of committing robbery simply because the tankers were left at the spot and was not taken away by the attackers, it cannot be said that the dominate intention of the attackers was only to murder the driver and not to commit robbery. The Tribunal has elaborately deliberated on this point and it would be appropriate to refer to Para 12 to 14 as

reproduced under:-

“12. In the case of Nisbet Vs. Rayne and Burn, (1910) 1 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employer's workmen, was robbed and murdered. The court of Appeal held:

“That the murder was an 'accident' from the standpoint of the person who suffered from it and that it arose out of an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the court followed its earlier judgment in the case of Challis Vs. London and South Western Railway Company, (1905) 2 KB 154. In the case of Nisbet, the court also observed that it is contended by the employer that this was not an 'accident' within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the work 'accident' negatives the idea of intention. In my opinion, this contention ought to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet.”

13. The judgment of the court of Appeal in Nisbet's case (1910) 1 KB 689, was followed by the majority judgment by the House of Lords in the case of Board of Management of Trim Joint District School Vs. Kelly, 1914 AC

667.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the autorickshaw.”

In view of the said discussion, I do not find that there is any infirmity in the impugned award. As regards, the second contention raised by the appellant, I do not find any merit in the same as admittedly the driver himself was not the owner of the offending vehicle.

Dismissed.

Counsel for the appellant states that the amount of

statutory deposit made by the appellant be released in favour of the appellant. Let same be released in favour of the appellant.

November 30, 2007
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KAILASH GAMBHIR, J.