

+ MAC.APP.No.239/2007Date of Decision: 23rd November, 2009

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ORIENTAL INSURANCE CO.LTD. Appellant
Through : Mr. L.K. Tyagi, Adv.

versus

JITENDER KUMAR & ORS. Respondents
Through : Dr. S.P. Sharma, Adv.
for R-1.
Mr. L.M. Asthana, Adv.
for R-5.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.1,03,300/- has been awarded to respondent No.1.

2. The learned counsel for the appellant submits that the appellant had insured bus bearing No.DL-1P-1441 which did not hit respondent No.1 at all. The learned counsel submits that bus bearing No.DEP-6789 hit the scooter due to which the scooter driver and the pillion rider fell on the road and bus bearing No.DL-1P-1441 hit the deceased Niraj Kumar who was sitting on the pillion of the scooter. The scooter

driver, Jitender Kumar fell on the other side of the road and the insured bus bearing No.DL-1P-1441 did not even touch respondent No.1.

3. The learned counsel for respondent No.1 does not dispute the above stated facts stated by learned counsel for the appellant. The learned counsel further submits that bus bearing No.DEP-6786 was not insured at the time of the accident. The said bus was registered in the name of respondent No.5 and was owned by respondent No.6 at the time of the accident.

4. In that view of the matter, respondent No.5 is primarily liable to pay the award amount to respondent No.1 and after making the payment, respondent No.5 is entitled to recovery rights against respondent No.6.

5. Respondent No.6 has been served by publication and has not entered appearance before this Court.

6. It is well settled that the registered owner of the vehicle is primarily liable to pay the compensation to the victim of the road accident and he is entitled to recover the same from the actual owner of the vehicle.

7. It is not disputed by learned counsel for respondent No.5 that respondent No.5 was registered owner of the offending vehicle at the time of the accident.

8. The learned counsel for respondent No.5 submits that respondent No.5 had sold the offending vehicle before the date of the accident to respondent No.6.

9. In view of the above, the appeal is allowed and the impugned award is modified. The award of Rs.1,03,300/- along with interest thereon @7% per annum from the date of filing of the petition till realization is passed in favour of respondent No.1 and against respondent Nos.5 and 6.

10. Respondent No.5 shall be entitled to recover the award amount from respondent No.6 after making the payment of the award amount to respondent No.1.

11. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

NOVEMBER 23, 2009
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J.R. MIDHA, J