

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.853/2006**

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Date of decision: 27th October, 2009

NATIONAL INSURANCE CO. LTD. Appellant
Through : Mr. Manoj Ranjan Sinha, Adv.

versus

KAMLESH SINGH & ORS. Respondents
Through : Mr. R.P. Singh, Adv.
for R-1 to 5.

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

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.4,60,000/- has been awarded to claimants/respondents No.1 to 5.

2. The only ground urged at the time of hearing of this appeal is that the cheque issued by the owner of the offending vehicle towards the premium of the Insurance of the offending vehicle was dishonoured and, therefore, the appellant is not liable. The copy of the cheque No.091956 dated 13th February, 2002 for Rs.23,129/- has been filed along with this appeal. The dishonour memo of the Bank has also been placed on record. The appellant

issued a notice dated 21st February, 2002 to the owner of the offending vehicle intimating him about the dishonour of the said cheque. In the notice dated 21st February, 2002, it was also notified to the owner that the company is under no risk till the time the fresh remittance of the premium is made by the owner. The learned counsel for the appellant submits that the owner did not make the payment of the premium amount after the notice dated 21st February, 2002 and, therefore, the appellant is not liable under the policy which stood cancelled after the notice dated 21st February, 2002.

3. It is well settled that the liability of the appellant continues towards the third parties till the notice is issued by the appellant to the Road Transport Authority. Admittedly, no notice was issued to the Road Transport Authority and, therefore, the appellant continued to remain liable towards third parties. However, after making the payment of the award amount, the appellant is entitled to recovery rights from the owner of the offending vehicle.

4. In the facts and circumstances of this case, the appeal is partially allowed by granting the recovery rights to the appellant to recover the award amount from the owner of the offending vehicle after making the payment of the award amount to the claimants.

5. The learned counsel for the appellant submits that the entire award amount has been deposited with the learned Tribunal in terms of the order dated 31st August, 2006. However,

the operation of the impugned award was stayed by this Court on 31st October, 2006 due to which the claimants could not get the award amount.

6. The claimants applied for release of the award amount by CM No.13662/2007 which was allowed vide order dated 26th March, 2008 and the amount was directed to be released upon furnishing bank guarantee. The claimants being poor persons could not furnish the bank guarantee and, therefore, the award amount was not released to the claimants.

7. Vide order dated 8th May, 2009, the order dated 31st October, 2006 was modified by this Court and the award amount was directed to be released to the claimants in pursuance to which the amount has been released to them on 12th October, 2009.

8. In the facts and circumstances of this case, it is held that the claimants shall be entitled to interest on the award amount till 8th May, 2009 when this Court directed the award amount to be released to the claimants.

9. The learned counsel for claimants/respondents No.1 to 5 submit that there is short deposit in respect of interest payable on the award amount up to the date of deposit.

10. The Accounts Department of Delhi High Court has done the calculation of interest and as per the said calculation, the appellant is liable to pay interest of Rs.79,858/- up to 8th May, 2009.

11. The appellant is directed to make payment of Rs.79,858/- to

the claimants/respondents by means of a cheque drawn in the name of Kamlesh Singh and the same be handed over to her in Court on the next date of hearing.

12. Upon the payment of the said interest amount, the Registry shall refund the statutory amount of Rs.25,000/- to the appellant.

13. The learned Tribunal is directed to release the FDRs with proper endorsement to the claimants in terms of the award.

14. The offending vehicle was owned by respondent No.7 who has since expired and is survived by Harbansh Singh and Jasbir Kaur who have been added as respondents No.7 and 8 vide amended memo of parties dated 14th September, 2007.

15. The appellant is granted recovery rights against respondents No.7 and 8 with respect to the amount paid to the claimants.

16. List the appeal for directions on 8th December, 2009.

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

J.R. MIDHA, J

OCTOBER 27, 2009

aj/mk