$~R-1 & 2

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

Date of decision: 12th January, 2015

\+ **FAO.No.726/2003**

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Shoumik Mazumdar, Advocate

Versus

M.K. SHARMA & ORS. .....Respondents

Through: None

\+ **FAO.No.894/2003**

M.K. SHARMA & ORS. .... Appellants

Through: None

Versus

PRAMOD CHAUDHARY & ORS. .....Respondents

Through: Mr. Shoumik Mazumdar, Advocate for Respondent no.3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of judgment dated 25.07.2003 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby

compensation of Rs.2,52,400/- was awarded in favour of claimants no.1 and 2, who are the parents of deceased Gaurav.

2. The appeal, FAO No.726/2003 is filed by the Insurance Company for reducing the amount of compensation while the Cross-Appeal FAO.894/2003 is for enhancement of compensation on the ground that compensation awarded is too less and meagre.

3. In FAO. 726/2003 preferred by Oriental Insurance Co. Ltd., the limited ground raised by the learned counsel for the Appellant is that the Appellant successfully proved the breach of the terms and conditions of the policy. The Appellant was therefore, entitled to recovery rights against the insured.

4. I have the Trial Court record before me. The Appellant insurance company examined R3W-1 Mr. Harsh, Clerk from the office of Distt. Transport Officer, Faridabad, Haryana and R3W-1 Mr. R.K. Goswami also from the office of Distt. Transport Officer, Faridabad, Haryana. Both the witnesses were confronted with the driving licence of the accused placed on record from the criminal case. They testified that the said driving licence was not issued by the Distt. Transport Officer, Faridabad, Haryana. It is therefore, urged by the learned counsel for the Appellant Insurance Company that even if the Insurance Company was liable to initially pay the compensation to the third party, it was entitled to

recover the same from the insured who committed breach of the terms and conditions of policy.

5. It is true that from the statement of the two witnesses mentioned above, it was established that the driving licence in question was not issued by the Distt. Transport Officer, Faridabad, Haryana. Copy of the insurance policy was also sought to be proved as Ex.R3W1/A. But, at the same time, no notice under Order 12 Rule 8 of Code of Civil Procedure, 1908(CPC) was issued to the insured to produce the driving licence of the driver who had caused the accident. No notice was issued to even produce the original insurance policy which, according to Mr. R.K. Goswami was given to the insured. Had any notice been issued to the insured, the owner(insured) might have come forward to prove that the licence was genuine or that there was any other driving licence on the basis of which he had employed the driver of the offending vehicle. In view of this, the Appellant Insurance Company has failed to discharge the initial onus placed on it that there was conscious and willful breach of the terms and conditions of the policy.

6. The appeal (FAO 726/2003) filed by the Appellant Insurance Company therefore, has to fail, it is accordingly dismissed.

7. Pending applications, if any, also stand disposed of.

8. The statutory amount of Rs.25,000/- shall be refunded to the Appellant Insurance Company.

9. Coming to the Cross-Appeal (FAO 894/2003), the learned counsel for the Appellants(claimants) has not come forward. Appropriately, the appeal has to be dismissed for non-prosecution. At the same time, I have also examined the merits of the case as well.

10. The deceased Gaurav was a bachelor and the claim petition was filed by his parents, who are Appellants no.1 and 2 in FAO 894/2003. His income was claimed to be Rs.4,000/- per month. The Claims Tribunal examined Arun Kumar Tandon(PW3), government contractor with whom the deceased Gaurav was claimed to be working. Arun Kumar Tandon stated that a salary of Rs.4,000/- was being paid to the deceased Gaurav. However, he did not produce any documentary evidence to support his claim. It may be noted that any income beyond Rs.40,000/- per annum was subject to Income Tax. Arun Kumar Tandon was put a question regarding deduction of Income Tax. He stated that the income was not taxable, which is not correct. In view of this, the Claims Tribunal rightly took the income of the deceased on the basis of Minimum Wages of an unskilled worker as no evidence with regard to his educational qualifications was produced on record. In case of a bachelor, there has to be deduction of 50% towards personal and living expenses as against

33% made by the Claims Tribunal. Similarly, the appropriate multiplier will be as per the age of the claimants(their age being higher), whereas the multiplier as per the age of the deceased was taken in the instant case. Considering that the accident took place in the year 1999, the overall compensation as awarded by the Claims Tribunal cannot be said to be on the lower side.

11. The appeal being FAO 894/2003 is accordingly dismissed.

12. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 12, 2015
pst