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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 6th January, 2015

+ CM(M) 502/2013

IFFCO TOKIO GEN INS CO LTD

..... Appellant

Through: Ms. Shantha Devi Raman, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents

Through: Mr. Vinod Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM(M) 502/2013 and CM APPL.7556/2013 (stay)

1. This Appeal is directed against the order dated 29.08.2012 passed by the Motor Accident Claims Tribunal, West Delhi (the Claims Tribunal) whereby the plea of the Appellant to decide the issue of maintainability of the petitioner's claim in the first instance without framing of issues and leading of evidence was rejected.
2. The impugned order which is a very short one is extracted hereunder:-

“ This petition has been filed for compensation with regard to damage to property. Ld. Counsel for respondent no.3 submits that it had filed written statement taking preliminary objection that in view of Section 147(2)(1)(b) of Motor Vehicle Act the liability of respondent no.3 against the 3rd party was limited to the

extent of Rs.6,000/-. It is further stated that in view of above clause limiting the liability of insurer this court has no pecuniary jurisdiction to try the petition.

Section 147(2)(1)(b) of the Act is as follows:-

“Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely-

(a) Save as provided in clause (b), the amount of liability incurred:

(b) In respect to damage to any property of a third party, a limit of rupees six thousand:”

Ld. Counsel for respondent no.3 submits that petition is not maintainable and is liable to be dismissed. At the time of framing of issues no issue was pressed as regards the pecuniary jurisdiction of this court to try the petitioner. Though matter had been listed for arguments on the maintainability of petition but I am of the view that there are several contentious issues which cannot be decided without evidence being led by the parties.”

3. As per the averments made in the petition, a Tata Indica Car bearing registration no.DL-1YA-7962 which was insured with the Appellant Insurance Company was owned by Mr. Dayanand Yadav (Respondent No.2 herein). On 13.05.2010 this vehicle while being driven in a rash and negligent manner caused damage to the property of Respondent No.1 New Delhi Municipal Council (NDMC) to the extent of Rs.75,000/-.

4. Thus, a submission raised by the learned counsel for the Appellant that

as per the provisions of Section 147(2)(1)(b) of the Motor Vehicles Act, 1988 (the Act) which has been extracted hereinabove in the impugned order, the liability of the Insurance Company was only limited to Rs.6,000/- and since NDMC had claimed a compensation of Rs.75,000/-, the Claim Petition was not maintainable before the Claims Tribunal. The only remedy available to the Respondent NDMC was to file a civil suit.

5. The contention raised is misconceived. In this regard, it will be appropriate to refer to the provisions of Sections 165 and 166 of the Act. As per Section 165 of the Act, the State Government can constitute one or more Motor Accident Claims Tribunals for specified areas for adjudication of claims of compensation in respect of the accidents involving death, bodily injury or damage to any property of third party. As per Section 166 of the Act, an application for compensation arising out of an accident of the nature specified under Section 165(1) of the Act can be filed, *inter alia*, by owner of the property which has been damaged.
6. Admittedly, NDMC is a third party and is claiming compensation in respect of damage caused to its property. If the Appellant Insurance Company contends that its liability is limited to Rs.6,000/-. The same can be urged and the Claims Tribunal is entitled to deal with the same

and to pass appropriate order to apportion the liability to pay compensation between the owner, driver and the insurer.

7. In view of the above, the appeal is misconceived and is accordingly dismissed with costs.
8. The Counsel fee is assessed at Rs.11,000/-.
9. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 06, 2015

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