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

% *Date of Decision : 30th September, 2015*

+ **MAC.APP. 1015/2011 & CM No.20783/2011**

ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.Amit Gaur, Advocate

versus

SANTOSH KUMAR SINGH & ORS Respondents

Through: None

PRATIBHA RANI, J. (Oral)

1. The Insurance Company has impugned the common award passed in Claim Petition Nos.2/02/11, 3/02/11 and 4/02/11 which were consolidated by the Tribunal vide its order dated 7th March, 2006.
2. Learned counsel for the appellant submits that the award was challenged by the Insurance Company by filing MAC.App.Nos.1014/2011, 1020/2014 & 1015/2011. The claimant Mohd. Ayub also challenged the award by filing MAC. App. No.336/2012.
3. On 1st October, 2014, the MAC.App. No.1015/2011 was not listed but other three appeals i.e. MAC.App.Nos.1014/2011, 1020/2014 & 336/2012 have been decided by this Court. Learned counsel for the appellant has submitted that the grounds of challenge in MAC.App.No.1015/2011 are same as taken in other two connected appeals arising out of the common award and in view of the decision of this Court on the issues involved in connected appeals, the present appeal may be disposed of accordingly.

4. The common award in three claim petitions was challenged by the Insurance Company in three separate appeals by denying the liability of the Insurance Company to pay the compensation for the following reasons:-

(i) The appellant Insurance Company did not receive the insurance premium as the cheque received was dishonoured.

(ii) The intimation in this regard was sent to the insurer hence the Tribunal could not have directed the Insurance Company to pay the awarded amount.

(iii) The driver of the offending vehicle did not have valid licence hence the Insurance Company is not liable to pay any compensation.

5. This Court while disposing of the connected appeals being MAC.App.Nos. 1014/2011 & 1020/2014 rejected the contentions raised on behalf of the Insurance Company and held as under:-

3. A perusal of the Award shows that the Tribunal noted that the original dishonoured cheque has been placed on record. The Tribunal also noted the evidence of Shri Vikram Singh examined by the appellant as R3W1 who has placed on record the dishonoured cheque and the cheque return memo. The said witness states that intimation of dishonour was sent to the owner/respondent No.3. However, copy of the notice is not placed on record. The Tribunal also noted that no attempt was also made to prove that the driver/respondent No.2 did not have a valid driving license. Based on this evidence the Tribunal held that the appellant is liable to pay compensation.

4. A perusal of the evidence of R3W1 shows that he has pointed out that the cheque issued by respondent No.3 was returned unpaid on presentation to the banker. The postal receipts regarding information sent to the insured respondent No.3 Shri Jogender Singh regarding cancellation of policy is marked as Ex.R3W1/4. It is further stated that notice under Order 12 Rule 8 CPC was sent. However, the copy of the notice sent to Joginder Singh intimating about cancellation of the policy has

not been placed on record. The Ex.R3W1/4 are photocopies of the postal receipts. No address is mentioned on the postal receipts. Based on this document it is not possible to conclude that the notice cancelling the insurance policy was served on the owner/respondent No.3.

5. The Supreme Court in the case of United India Insurance Company Ltd. vs. Laxmamma & Ors., (2012) 5 SCC 234 after noticing the judgment of the Supreme Court in the case of Oriental Insurance Co. Ltd. vs. Inderjit Kaur & Ors., 1998 ACJ 123 has held that the insurance company has to prove the delivery of intimation to the insured about the dishonour of the cheque and cancellation of the insurance policy to absolve itself of its liability. Relevant para is as follows:-

“26. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of the authorized insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.”

In the absence of proof of cancellation of the insurance policy, the submission of the appellant cannot be accepted.

6. On the issue of the driving license of respondent No.2, the Tribunal noted that though R3W1 has mentioned about the

notice under Order 12 Rule 8 CPC, but it has not summoned the concerned officer from Ashok Vihar to prove the fact that the license of the driver was invalid. What has been placed on record is a letter dated 3.9.2001 addressed to MLO and necessary charges have been deposited. There is nothing on record to show that the license of respondent No.2 was not valid. Further, the Tribunal noted that counsel for appellant appeared before the Tribunal for the first time on 22.7.2002. The notice under Order 12 Rule 8 CPC has been sent on 26.10.2009. The Tribunal in these facts held that the appellant has failed to prove that the license of respondent No.2 is valid.

7. In my opinion, there are no reasons to differ with the views of the Tribunal. There is no merit in the said contention. Accordingly, the present appeals are without merit and dismissed. The statutory amount deposited by the appellant at the time of filing the appeal be refunded to the appellant. All interim orders stand vacated.

6. This Court has upheld the award passed by the Tribunal rejecting the contention raised by the Insurance Company and dismissed the connected appeals. As the order in connected appeals has attained finality, adopting the reasoning given above, the appeal MAC.App.No.1015/2011 is also dismissed.

7. The statutory amount deposited by the appellant at the time of filing the appeal be refunded to the appellant.

PRATIBHA RANI, J.

SEPTEMBER 30, 2015

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