

\$~R-133

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

Date of Decision: 01.06.2016

+ **MAC.APP. 98/2008 & CM No.2367/2008**

ORIENTAL INSURANCE CO. LTD.

..... Appellants

Through Mr. Pankaj Seth, Adv.

versus

LAL KAUR & ORS.

..... Respondents

Through None

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Surender Pal Singh, a bachelor working as constable in Delhi Police, aged about 36 years, died in a motor vehicular accident that occurred on 21.05.1999 involving negligent driving of Tata Sumo bearing registration No.UP 16 4048 (offending vehicle), admittedly insured third party risk with the appellant insurance company. His widowed mother (first respondent) (claimant) instituted an accident claim case (petition No.124/04) on 24.08.1999 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act), on the averments that the accident had occurred due to negligent driving of the offending vehicle by Rakesh Kumar Sharma (second respondent). The tribunal, upon inquiry, by judgment dated

05.10.2007 upheld the case about death having occurred due to negligent driving of the offending vehicle. It proceeded to award compensation in the sum of Rs.5,70,680/- with interest at 9% per annum in favour of the claimant fastening the liability on the insurer.

2. The appeal at hand was filed taking exception, *inter alia*, to grant of interim award without any evidence being taken; the tribunal not taking note of the undue delay and yet adding the element of interest; the witnesses examined with the driver and owner being set *ex-parte* in the course of inquiry; no finding having been returned in respect of the responsibility of the owner/insured of the motorcycle on which the deceased was riding; and about the calculation of loss of dependency and interest.

3. The appeal was entertained and notice issued. It was directed to be shown in the list of regular matters as per order dated 21.04.2010. At the hearing, however, no one has appeared on behalf of the appellant. Having regard to the fact that this is now the oldest appeal on board of this Court, there is no reason why the hearing should be deferred.

4. On perusal of the grounds and the tribunal's record, the appeal is found to be wholly unmerited. The interim award under Section 140 of MV Act did not require any formal evidence on the question of fault to be adduced. If the driver and owner were set *ex-parte*, on account of their absence in spite of notice, the insurer cannot raise this as an issue in appeal against final award. It is noted that no plea was taken about responsibility of the owner of the motorcycle which the deceased was riding. The levy of interest by the tribunal in the facts and circumstances of the case does not

suffer from any error. The other pleadings on record are vague and so inconsequential.

5. The appeal is, therefore, dismissed.
6. Statutory deposit, if made, shall be refunded.

(R.K. GAUBA)
JUDGE

JUNE 01, 2016/VLD

