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

Date of Decision: 25.05.2016

\+ MAC.APP. 6/2008 & CM No. 8268/2008

NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr. Ramesh Kumar, Adv.

versus

SUNITA & ORS ..... Respondents

Through: Mr. Sudarshan Rajan & Mr. Arjun Gadhoke, Advs. for R-1 & 2.
Mr. Arbaaz Hussain, Adv. for Ms. Shantha Devi Raman, Adv. for R-3 & 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sanjeev Kumar, aged more than 31 years (he was born on 10.12.73) working as a language teacher in Government co-educational middle School, Dilshad Garden, suffered injuries in a motor vehicular accident that occurred on 13.09.2004 statedly on account of negligent driving of motor vehicle described as truck bearing registration No. DL 1G 8101 (the offending vehicle) and died in the consequence. The offending vehicle was insured against third party risk with the appellant insurance company, it being registered in the name of Chander Pal, who was impleaded as first respondent before the tribunal. The dependent family members of Sanjeev Kumar (first to fourth respondents) brought an accident claim case (MACT

No. 549/2004) before the motor accident claims tribunal (tribunal) on 08.11.2004 seeking compensation under Section 166 of Motor Vehicles Act, 1988 (MV Act) impleading Chander Pal (owner) and New India Insurance Company Ltd. (insurer) as respondents. The owner did not participate in the proceedings after filing a written statement. The claim case was contested by the insurance company. On the conclusion of inquiry, the tribunal, by judgment dated 20.09.2007, upheld the case of the appellants that death had occurred due to negligent driving of the offending vehicle. The said finding has attained finality as it was not challenged thereafter.

2. The tribunal assessed and awarded compensation in the sum of ₹ 26,17,426/- with interest in favour of the claimants directing the insurance company to pay. It appears the insurance company had pleaded in its written statement that there was breach of terms and conditions of the insurance policy as the driver of the offending vehicle was not holding a valid or effective driving licence. This plea was sought to be supported by Anil Kumar Sharma (R2W1). The tribunal, however, was not impressed and declined to grant recovery rights to the insurance company.

3. Though the appeal was filed by the insurance company raising a number of contentions, it is pressed only to seek recovery rights reiterating that the driver was not holding a valid or effective driving licence.

4. It is noted that the claimants had also filed cross-objections (being CM No. 8268/2008) seeking enhancement, the same having been submitted at the hearing. However, the learned counsel representing the two sets of claimants submitted that the cross-objections are not pressed and may be disposed of accordingly. The cross-objections are, thus, dismissed, as not pressed.

5. It is noted that the evidence of R2W1 was adduced only to prove a copy of the insurance policy. There is no evidence brought on record by the insurance company to even remotely suggest that the driver of the offending vehicle was not holding a valid or effective driving licence. With no such evidence in support of the plea about breach of terms and conditions of the insurance policy having been led, the burden would not shift on to the owner to show otherwise.

6. Thus, the appeal of the insurance company is dismissed.

7. By order dated 16.01.2008, the insurance company had been directed to deposit 50% of the awarded amount within the period specified. By order dated 01.09.2008, 25% of the said amount was allowed to be released to the claimants. By order dated 18.05.2009, the balance of the deposit held in this Court was directed to be transferred to the tribunal with upto date interest and the insurance company was directed to deposit the remaining amount payable under the award with interest with the tribunal within the period specified. The tribunal, in turn, was directed to keep the said balance in fixed deposit in the name of the first respondent for a period of five years with right to draw periodic interest. The tribunal shall now release the balance lying in deposit to the claimants in accordance with the directions in the impugned judgment of the tribunal.

8. The statutory deposit, if made, shall be refunded.

(R.K. GAUBA)
JUDGE

MAY 25, 2016
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