$~R-134

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

Date of Decision: 01.06.2016

\+ **MAC.APP. 101/2008**

ORIENTAL INSURANCE CO. LTD. ..... Appellants
Through: Mr. Saurabh Kr. Tuteja for Mr. Tarkeshswar Nath, Adv.

versus

SANTOSH & ORS. ..... Respondents
Through: None .

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 12.03.1998, Satya Prakash died in a motor vehicular accident involving use of bus bearing registration No. DL 1P 3670 (the offending vehicle), statedly insured against third party risk with the appellant insurance company for the period in question. His dependent family members (first to sixth respondents/claimants) instituted an accident claim case (Suit No. 961/1998) on 28.08.1998, seeking compensation initially under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) but later converting it into a case under Section 163 A of MV Act.

2. The tribunal held inquiry, and by judgment dated 20.11.2007 upheld the case that the death had occurred due to negligent driving of the bus. The tribunal awarded compensation in favour of the claimants in the sum of ₹

3,75,000/- with interest @ 7% per annum and directed the insurance company to pay.

3. The insurer had taken the plea before the tribunal that there was no valid or effective insurance cover for the date of accident (i.e. 12.03.1998). The said contention raised was considered but rejected by the tribunal with following observations:-

> "*It is argued on behalf of R3, insurance company that there was no privity of contract between respondent no.2 (owner) and R3 (insurer) as the policy of insurance of offending vehicle for the period from 6.12.97 to 5.12.98 had been cancelled because of dishonouring of cheque of consideration amount paid by respondent No.2. It is furthered argued that thereafter fresh cover note had been issued for the period from 21.3.98 to 20.03.99, which does not cover the date of accident i.e. 12.3.98, hence R3 is not liable to pay any compensation to petitioners even that cheque was also dishonoured. I have carefully considered the submissions made by counsel for R3 and scrutinized the evidence on record. R3W1 Anand Kumar, has no where disposed in his entire testimony that any legal notice/show cause notice was issued to R2 before cancelling the cover note/insurance policy No. 25132 dt. 6.12.1997 for the period from 6.12.97 to 5.12.99. Initially the cover note was issued. Thereafter insurance policy was also issued. No date when policy was cancelled has been stated by this witness. No copy of notice issued to the insured prior to cancellation to insurance policy has been placed on the file. No bounced cheque/cheque return memo with regard to the policy w.e.f. 6.12.97 to 5.12.98 has been placed on the file. The documents placed on the file with regard to bouncing of cheques pertains to second policy issued w.e.f 21.3.98 to 20.3.99 which does not cover the date of accident. In the absence of any such evidence, it cannot be said that the insurance policy of R2 had been legally cancelled by R3, hence R3 cannot be allowed to take benefit of its own wrong. In view of above discussion, this*

court is of opinion that R3 is liable to pay compensation to the petitioners on behalf of its insured."

4. The insurer by the appeal at hand reiterates that there was no valid insurance cover.

5. The reasons set out by the tribunal, as quoted above for rejecting the above-said plea, are found to be appropriate in the face of evidence on record. Thus, the Court does not find any merit in the appeal. It is dismissed.

6. By order dated 21.01.2009, it was noted that the appellant had deposited the entire awarded amount in the Court. The said deposited amount was directed to be kept in fixed deposit initially for a period of six months. By order dated 13.05.2009, the Registrar General was directed to transfer the said deposit and statutory amount to the tribunal within the period specified and the tribunal was given liberty to release the same to the claimants in terms of the award. Thus, no further directions are required.

7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

JUNE 01, 2016/nk