$~R-125A

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

Date of Decision: 31.05.2016

\+ **MAC.APP. 67/2008**

NATIONAL INSURANCE CO. ..... Appellant
Through Mr. Amit Gaur, Adv.

versus

KHATU SHYAM POLYWEAVERS PVT. LTD. & ORS. .... Respondents
Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. P.K.N. Pillai suffered injuries in a motor vehicular accident that occurred on 05.10.2001 involving negligent driving of motor vehicle bearing registration No.HR 38E 5464 (offending vehicle) and died in the consequence. His dependent family members, second to fourth respondents (claimants) instituted an accident claim case (suit No.503/2006) on 05.12.2001 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading Vikram Chaturvedi (fifth respondent) and M/s Khatu Shyam Polyweavers Pvt. Ltd. (first respondent) and the appellant insurance company as respondents on the averments that they are the driver and owner and insurer respectively of the offending vehicle.

2. At the inquiry the insurer admitted its liability to indemnify under the insurance policy, but, pleaded statutory defences. The driver and owner of the offending vehicle filed written statement denying the claim brought before the tribunal but thereafter chose to suffer the proceedings *ex-parte*. The tribunal held inquiry, and on that basis passed judgment dated 12.11.2007 upholding the case of the claimants that P.K.N.Pillai had died in the motor vehicular accident due to negligent driving of the offending vehicle. Compensation in the sum of Rs.6,08,680/- was awarded with interest in favour of the claimants.

3. It is noted that the insurer, in the course of the inquiry, had examined two witnesses including Mohd. Jamil (RW1) record keeper of the transport authority and G K Nagaraj (RW2), senior assistant, National Insurance Co. Pvt. Ltd. The purpose of examining the said witnesses was to bring home the defense plea that the driver (fifth respondent herein) of the offending vehicle was not holding a valid or effective driving license and thus there a breach of terms and conditions of the insurance policy. This plea was not even considered or addressed. The insurance company was directed to pay the compensation awarded.

4. By the appeal at hand the insurance company presses for recovery rights against the owner and driver of the offending vehicle submitting that since it had raised the statutory defence and had also led evidence in support, the tribunal was duty bound to consider the same and return clear findings.

5. Having gone through the tribunal's record, this Court finds merit in the abovementioned contentions of the insurance company. The issue

having been raised and evidence having been led by the insurer, it having even been noted by the tribunal in (para 4 of) the impugned judgment, there is no reason why it should have refrained from returning in finding. It was the duty of the tribunal to consider the pleadings and the evidence and give findings on facts and also follow it up with suitable directions in accordance with law. This not having been done, it is in the fitness of things that the matter limited to inquiry into the issue of statutory defence raised by the insurer is remitted to the tribunal for the needful now to be done.

6. Thus, the appeal is allowed and further inquiry, limited to the above noted issue, is remitted to the tribunal for appropriate consideration and adjudication. For removal of doubts, it is hereby clarified that the finding affirming the case of the claimants and granting compensation in their favour is not being disturbed.

7. The parties shall appear before the tribunal for further proceedings on 15.07.2016.

8. By order dated 01.02.2008, the insurance company had been directed to deposit the entire awarded amount within the period specified. By order dated 21.01.2009, the said deposited amount was released to the claimants in terms of the impugned judgment with observation that the appellant would be entitled to recovery rights, if it succeeds in the present appeal.

9. Since the issue arising out of the defence plea raised by the insurer is being remitted to the tribunal for appropriate consideration and adjudication, it is directed that in case the tribunal returns a finding upholding the plea of breach of terms and conditions of the policy, it shall consider and grant recovery rights to the insurer.

10. Statutory deposit, if made, shall be refunded.

11. The appeal is disposed of in above terms.

12. A copy of this judgment shall be sent by the registry to the claimants and the insurance company.

(R.K. GAUBA)
JUDGE

MAY 31, 2016/VLD

HIGH COURT OF DELHI
सत्यमेव जयते