

\$~R-132

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

Date of Decision: 01.06.2016

+ **MAC.APP. 97/2008**

ORIENTAL INSURANCE CO. LTD. Appellants
Through Mr. Ravi Sabharwal, Adv.

versus

RAVI & ORS. Respondents
Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent had suffered injuries in a motor vehicular accident that occurred on 04.11.2002, statedly on account of negligent driving of ambassador car bearing registration No.DL 7C 3725 (the offending vehicle), which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. He filed an accident claim case (suit No.474/03) on 13.12.2003 seeking compensation under Sections 166 & 140 of Motor vehicles Act, 1988 (MV Act). It appears another person Subhash son of Pancham Lal had also filed a similar accident claim case (suit No.473/03) on account of the same accident. Both were clubbed together and a common inquiry was held by the motor accident claims tribunal (tribunal). By judgment dated 12.12.2007, the tribunal upheld the case of the first respondent (claimant) about injuries having been suffered in accident due to negligent driving of

the offending vehicle. It may be mentioned here that case of the other said claimant was dismissed by the said judgment. Compensation in favour of the first respondent, in the sum of ₹67,130/- was awarded and the insurance company was directed to satisfy the award with interest.

2. In the appeal at hand, it is pointed out by the insurer that it had led evidence by examining Pardeep Anand (R3W1) and Sandeep Raina (R3W2) to prove on record that the second respondent Dhoom Singh (driver of the offending vehicle) was holding a driving license which was valid only for a motorcycle. Since, per the proof adduced, he was driving a car at the time of accident, there was a breach of terms and conditions of the insurance policy.

3. It is noted from the judgment of the tribunal that this contention was not even considered or addressed by the tribunal. Since the appellant presses only for recovery rights against the owner and driver of the offending vehicle, the appeal to that extent is allowed. The matter arising out of above noted request is remitted to the tribunal for consideration on the basis of evidence led and appropriate adjudication.

4. The parties are directed to appear before the tribunal on 26.07.2016.

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

6. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

JUNE 01, 2016/VLD