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

Date of Decision: 23rd February, 2016

\+ **CM(M) 292/2011**

ORIENTAL INSURANCE CO LTD

..... Petitioner

Through Mr. Tarkeshwar Nath, Mr. Randhir Kumar and Ms. Priyanka Parida, Advs.

versus

SUNIL KUMAR & ORS

..... Respondent

Through Mr. Anand Nandan and Mr. D S Mishra, Advs. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company had issued a third party risk insurance policy in respect of motorcycle bearing registration no.UP 53L 7488 (motorcycle) which was valid for the period 11.10.2003 to 10.10.2004 including 20/21.03.2004 when the said vehicle was involved in a collision against Mitsubishi Lancer bearing No.DL 8CG 5870 (the car). The claim petition presented on 12.01.2005 by Sunil Kumar (the first respondent herein) sought compensation for the injuries suffered in the said accident, *inter alia*, pleading that he was a pillion rider on the motorcycle which had reached Mexmuellar Marg near Lodhi Road at 12.30 AM (midnight) at which stage it was hit by the car which had come from the rear side at a fast speed.

Allegations of rash/negligent driving were also made against Neeraj Niranjan (the second respondent herein), the driver and owner of the motorcycle. The Tribunal, by judgment dated 18.12.2010, held that the motorcycle rider was liable to pay compensation in the sum of ₹3,08,083/- to the claimant and since the motorcycle was insured with the appellant company, it was directed to pay the said awarded compensation with interest.

2. The insurance company, by appeal at hand, points out that the first issue framed by the Tribunal was to the following effect :

> *"Whether petitioner sustained injuries on the night intervening 20/21.03.2004 on account of rash and negligent driving of Mitsubishi Lancer Car No.DL 8CG 5870 on the part of R-3 Hemant Gogia?"*

3. The Tribunal also noted (in para 5) the effect of the deposition of the claimant during his cross-examination before the Tribunal as under :

> *"...In cross examination he admitted that on the day of accident he requested R-1 for lift as he was proceeding towards the same direction. He denied that accident took place as the car Mitsubishi Lancer Car hit the motor cycle driven by R-1. He volunteered that the car was hit by the motor cycle and not vice versa. He denied that the accident took place due to imbalancing of heavy bag being carried by the petitioner."*

4. The Tribunal concluded on the first issue quoted above that the accident had occurred due to driving of "the offending vehicle in a rash and negligent manner" by the motorcycle driver. Clearly, the finding recorded is not in *sync* with the issue that was framed. The issue indicated that the offending vehicle, as understood by the Tribunal, was the car rather than the motorcycle. There was no issue framed as to the role of the driver of the

motorcycle. There was no finding recorded with regard to the conduct of the car driver. In the face of the above facts and circumstances, the counsel for the claimant fairly conceded that the mater has not been appropriately inquired into and it needs fresh adjudication on the basis of issues to be properly framed and put to trial.

5. Thus, the appeal is allowed. The impugned judgment/award is set aside. The matter is remitted to the Tribunal for fresh inquiry in accordance with law. The parties shall appear before the tribunal for further proceedings on 08.03.2016.

6. By order dated 15.03.2011, the appellant insurance company had been directed to deposit the entire award with up-to-date interest with the Registrar General of this Court within the period specified. By the same order, 50% of the deposited amount was directed to be released in terms of the impugned judgment, the balance to be kept in fixed deposit receipt with a nationalized bank initially for a period one year subject to automatic renewal, if necessary. Having regard to the above result of the appeal filed by the insurance company, it is directed that the balance amount lying in fixed deposit receipt in nationalized bank shall be arranged by the Registrar General to be transferred to the Tribunal which shall retain it in a nationalized bank in an interest bearing account initially for a period of one year to be renewed from time to time, to be availed of for satisfying the balance claim of the claimant towards compensation as per fresh determination on the conclusion of further inquiry ordered as above, though no release shall be allowed before the expiry of the period of appeal to which the party held accountable will be entitled.

7. Needless to add, given the old pendency of the matter, the Tribunal shall make endeavour to conclude the inquiry and fresh adjudication expeditiously, preferably within a period of six months from the date fixed as above.

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

9. The Tribunal's record shall be returned.

10. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 23, 2016/VLD