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

+ MAC.APP. 480/2012 & CM No.8056/2012

ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. A.K. Soni, Adv.

versus

MS K DUTTA & ORS Respondents
Through: Mr. Amit Pandey, Advocate for
respondent No.1

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
01.09.2016

1. The appellant has challenged the award dated 24th January, 2012 whereby compensation of Rs.77,000/- has been awarded to respondent No.1.
2. The accident dated 3rd September, 2009 resulted in grievous injuries to respondent No.1 who instituted the claim petition against the owner, driver and insurance company of the offending vehicle bearing No. DL-1P-A-7555. Respondent No.2 is the owner and the respondent No.3 is the driver of the offending vehicle.
3. The appellant contested the claim petition on the ground that the cheque bearing No.755595 dated 16th February, 2009 for Rs.23,829/- was dishonoured upon presentation whereupon the appellant intimated respondent No.2 about the dishonour of the cheque vide registered letter dated 02nd March, 2009. The appellant also intimated the RTO vide letter dated 02nd March, 2009 and thereafter, cancelled the policy. The appellant examined its Assistant Manager as R1W1 who proved the dishonoured cheque as Ex.R1W1/2, dishonour memo as Ex.R1W1/3, notice of intimation of dishonour of cheque to the insured and intimation to the RTO as

Ex.R1W1/4, Ex.R1W1/5 and Ex.R1W1/6. The copy of the policy bearing the endorsement of the cancellation has been proved as Ex.R1W1/1.

4. Learned counsel for the appellant submits that the offending vehicle was not insured on the date of accident and, therefore, the appellant cannot be held liable to pay award amount to respondent No.1.

5. There is merit in the contention of the learned counsel for the appellant. Since the insurance policy was validly cancelled on account of the dishonour of the cheque with intimation to the insured as well as RTO, the appellant cannot be held liable to pay award amount to respondent No.1.

6. The appeal is allowed and the award against the appellant is set aside. However, the award against the respondent No.2 and 3 is upheld and respondent No.1 is at liberty to execute the award against the respondents No.2 and 3.

7. The appellant has deposited the entire award amount along with interest with UCO Bank, Delhi High Court Branch in terms of the order dated 04th May, 2102. UCO Bank is directed to refund the said amount along with interest to the appellant within four weeks. The statutory amount deposited by the appellant be also refunded back within four weeks. CM No.8056/2012 is disposed of.

J.R. MIDHA, J.

SEPTEMBER 01, 2016
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