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

Date of Decision: 20th January, 2016

\+ **MAC.APP. 468/2013 & CM No.8341/2013 (Addl. Evidence)**

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through Mr. Amit Gaur, Adv. for appellant

versus

SANDEEP KHATRI AND ORS ..... Respondents

Through Mr. Anshuman Bal, Adv. for claimant

Ms. Sarita Dixit, Adv. for Mahavir Prasad Bansal (owner)

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal under Section 173 of Motor Vehicles Act, 1988 ("MV Act") has been taken out by the insurance company against the judgment dated 27.11.2012 of the Motor Accident Claims Tribunal ("the Tribunal") in MACT case No.717/2010 submitted by Sandeep Khatri (first respondent herein) and his minor daughter Vanshika (second respondent herein) on account of death of Jyoti (wife and mother of first and second respondent herein respectively) in a motor vehicular accident that occurred at about 9 PM on 31.03.2010 in the area of Palla More Red Light Near Puliya, G T Karnal Road, Alipur involving truck bearing No.HR 55F-4550 (hereinafter "the offending vehicle").

2. It was stated that the offending vehicle was driven in a rash/negligent manner by Bablu Yadav and that it was owned by Mahavir Prasad Bansal, the said persons having been impleaded as first and second

respondent before the Tribunal. The offending vehicle was admittedly insured for the relevant period with the appellant, which was impleaded as the third respondent in the claim petition. The petition was allowed by judgment dated 27.11.2012 and compensation in the sum of Rs.11,50,000/- was awarded in favour of the claimant with interest at 9% per annum from the date of filing of the petition (05.05.2010) till realisation.

3. The insurance company, through the appeal at hand, has raised the contention that the offending vehicle was driven by the driver (Bablu Yadav) without holding a valid and effective driving licence and, thus, there was a breach of the policy conditions and, therefore, the insurance company ought to have been given recovery rights against the owner. An application has been submitted by the appellant company seeking opportunity to produce evidence in support of the aforementioned claim.

4. The learned counsel for the appellant company fairly submitted that no relief against the claimant is pressed in the appeal at hand and further that the amount payable in terms of the impugned award has already been deposited and part released to the claimant in terms of the earlier orders of this Court. He also submitted that the appellant company has no objection to the balance also to be released to the claimant and presses the appeal only for opportunity to prove that there was a breach of the policy condition for which the matter may be remitted to the Tribunal for inquiry.

5. The claimant submitted no objection to the prayer of the insurer and presses only for release of the compensation. The learned counsel appearing for the third respondent (the owner) submitted that the driver (the second respondent) was holding a valid driving licence and, thus, there was no breach of the policy condition. She agreed that the matter arising out of the contention raised by the insurance company may be

remanded, for limited inquiry to the Tribunal and in case the finding recorded is to the effect that there was a breach of policy condition, the Tribunal may be empowered to give the necessary directions for recovery rights to be granted to the insurance company.

6. In the aforementioned facts and circumstances of the case, the joint prayer made by all sides is allowed. The balance amount lying with the UCO Bank, Delhi High Court Branch, New Delhi shall be released to the claimants in terms of the impugned judgment.

7. The issue arising out of contention of the insurance company that the driver was not holding a valid driving licence is remanded for inquiry to the Tribunal. In case the Tribunal concludes that there was a breach of policy condition, it shall issue necessary directions for granting recovery rights to the insurance company against the owner. For the said limited purpose, the parties i.e. the insurance company and the owner shall appear before the Tribunal for further proceedings in accordance with law on 22.03.2016.

8. The statutory deposit, if made, shall be refunded.

9. The trial court record, if requisitioned, be returned with a copy of this judgment.

10. The appeal of the insurance company stands disposed of with above observations/directions.

R.K. GAUBA
(JUDGE)

JANUARY 20, 2016/VLD