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

Date of Decision: 21st April, 2016

+ **MAC.APP. 395/2010 & CM No. 11731/32010**

ORIENTAL INSURNACE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

CHANDER PAL & ORS Respondents

Through: Ms. Vibha Mahajan Seth, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 07.12.2009, the motor accident claims tribunal (tribunal) decided accident claim case brought by the first respondent (the claimant) on 30.09.2005 seeking compensation for injuries suffered in motor vehicular accident that had occurred on the night intervening on 06.06.2005 and 07.06.2005 involving three wheelor scooter (TSR) bearing registration No. DL RE 2846 and Maruti car (car) bearing registration No. DL 3CE 0471. The TSR was driven by the claimants and the car statedly driven by the second respondent Vikas Gupta. The car was admittedly registered in the name of the appellant insurance company (insurer) on the relevant date concededly because it had been transferred in its name after it had been stolen from the possession of its erstwhile owner, the claim of the

said earlier owner having been settled by the insurance company against an insurance policy issued in its favour covering the risk of theft.

2. Since the insurance company was the registered owner of the car, it was also impleaded as party (second respondent before the tribunal) to the claim case, in addition to Vikas Gupta (the first respondent before the claim case) on the ground he was the driver of the car at the relevant point of time. Both respondents before the tribunal, including the appellant, suffered the proceedings *ex-parte*. The appellant, however, relied upon document in the nature of *superdaginama* certified copy of which was presented before the tribunal through counsel to contend that the car had actually been sold by the appellant in favour of Vikas Gupta. The contention based on such document, however, was rejected by the tribunal and the liability to pay compensation determined in favour of the claimant fastened on it.

3. By the appeal at hand, the insurance company which has been called upon to pay compensation to the claimant on the basis of finding that it is the registered owner of the car, reiterates the submission that car had been sold to Vikas Gupta (the second respondent in appeal). The insurance company had sought opportunity to lead additional evidence under order 41 Rule 27 of the Code of Civil Procedure, 1908, to prove its case about the sale of the car in favour of Vikas Gupta. The said application was considered but dismissed by a learned single Judge of this Court by order dated 23.03.2015. No appeal admittedly was taken out and the said order has attained finality.

4. The fact remains that no evidence has been adduced to affirm the case of sale of the car by the appellant company in favour of Vikas Gupta. In these circumstances, the appeal is unmerited and consequently dismissed.

5. The statutory deposit, if made, shall be refunded.
6. The stay against enforcement of the impugned judgment is vacated.

R.K. GAUBA
(JUDGE)

APRIL 21, 2016/nk

