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

\+ MAC.APP. 268/2015

RAMESH KUMAR & ORS

..... Appellant

Through: None

versus

RAJ KUMAR & ORS (ORIENTAL INSURANCE COMPANY)

..... Respondent

Through: Mr. R B Shami, Adv. for R-2
Mr. Siddharth, Adv. for R-3

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

<u>O R D E R</u>

% 15.03.2016

This appeal was filed in March, 2015 to seek enhancement of the compensation as awarded by the motor accident claims tribunal in favour of the appellants by judgment dated 24.11.2014 in accident claim case registered as suit No. 74/10/06. It is noted that the claim case arose out of death of Asha Rani in a motor vehicular accident that had occurred on 14.10.2005 involving the scooter bearing No.DL 35 AF 1495 statedly driven by the third respondent, it being owned by the first respondent, and admittedly insured against third party risk with the second respondent. The driver and owner were held jointly and severally liable. The contention of the insurance company that the driver did not hold a valid or effective license and consequently there was a breach of terms and conditions of the insurance policy was upheld. The insurance company was directed to pay the compensation but granted recovery rights against the driver and owner.

By order dated 16.03.2015, notices were directed to be issued on this appeal to the respondents. Whilst the driver and insurer have been served and have appeared, the owner of the offending vehicle has not been served. The notice had returned unserved before the Registrar on 20.07.2015 and it was directed that upon fresh steps notice shall issue to the said party (first respondent). Thereafter, the appellants have stopped appearing. They did not appear before the Registrar on any of the three subsequent dates namely 28.09.2015, 30.11.2015 and 29.01.2016. For want of steps, notice also could not issued to the first respondent. The situation is the same today. None has appeared in spite of repeated calls and the matter having been passed over several times. It is now 3.35 PM. The appeal as against the first respondent is liable to be dismissed for non-prosecution. Since he is the owner and the person insured in relation to the insurance company, the appeal would become defective on account of non-joinder even against the insurance company. Even otherwise, in absence of the appellants, the appeal is liable to be dismissed in default.

The appeal, thus, is dismissed in default and for want of prosecution.

R.K.GAUBA, J

MARCH 15, 2016
VLD