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

Date of Decision: 22nd March, 2016

+ **MAC.APP. 608/2012**

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. A.K. Soni, Adv.

Versus

SHANTI DEVI & ORS.

..... Respondents

Through: Mr. Naushad Ahmad Kha, Adv. for
R-1 to 7.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rattan Singh died as a result of injuries suffered in a motor vehicular accident that occurred on 25.06.2009 involving truck bearing No. UP 21M 5284 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question, which liability was undertaken subject to compliance with provisions of Motor Vehicles Act, 1988 (MV Act). The dependant family members of Rattan Singh, first to seven respondents (the claimants) brought

a claim petition under Sections 166 and 140 of MV Act on 13.8.2009 before the motor accident claims tribunal (the tribunal) which registered it as MACT No. 478/2011 (2009). In the said case, besides the insurer, the driver and owner respectively of the offending vehicle (eighth and ninth respondents herein) were impleaded as respondents.

2. On the basis of inquiry, the tribunal, by judgment dated 15.03.2012, awarded compensation in the sum of ₹ 4,79,872/- with interest in favour of the claimants. The insurance company had taken the defence that there had been a breach of terms and conditions of the policy inasmuch as there was no valid permit taken out in respect of the vehicle. This contention was rejected by the tribunal and it was asked to indemnify and pay.

3. The short issue raised and pressed in the appeal at hand is with regard to the claim of the insurance company to recovery rights, insisting that there was breach of terms and conditions of the policy.

4. The tribunal's record shows that there was only one document brought on record in the nature of permit, it being a temporary permit (mark A) for the period 26.06.2009 to 23.07.2009. The accident had occurred on 25.06.2009. The tribunal observed that the burden of proof about there being no valid permit was that of the insurance company which sought to be exonerated. In the considered view of this Court, this approach was erroneous. The tribunal should have called upon the owner to adduce positive evidence rather than insisting on negative evidence to be furnished by the insurance company. It is only after the owner had shown by some evidence that a valid permit existed that the insurance company could have

been called upon to prove facts to the contrary. Noticeably, the driver and owner did not contest the proceedings before the tribunal, suffering the same *ex-parte*. Same is the state of affairs even in appeal. Thus, it has to be assumed that the owner of the offending vehicle is not in a position to prove that a valid permit existed in respect of the offending vehicle for the date of accident. In these circumstances, the plea of the insurance company must be upheld. Though under the third party insurance policy it is liable to satisfy the claim of the third party (claimants), it deserves recovery rights against the owner and driver who have been held jointly and severally liable.

5. By order dated 28.05.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest out of which 80% was allowed to be released. The balance retained in fixed deposit with UCO Bank, Delhi High Court Branch. By order dated 06.07.2012, however, the said direction was modified and Rs.1 lakh was allowed to be released to the first claimant (first respondent). The Registrar General shall take necessary steps to release the same to the claimants in terms of the impugned judgment. The tribunal had observed (in para No. 33 to 36) that only the first claimant (widow) and son fourth claimant (son named Ajay) could be treated as dependants, the others being married and well-settled. Yet, in para 53, it proceeded to apportion compensation amongst all the claimants. The issue of apportionment, thus, needs to be clarified. In the facts and circumstances, the share of the fourth claimant (Ajay) is determined to be the one granted by the tribunal, the entire balance being payable to the first claimant(widow) only.

6. The appeal stands disposed of in above terms.

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

R.K. GAUBA
(JUDGE)

MARCH 22, 2016
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