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

Date of Decision: 02nd February, 2016

\+ **MAC.APP. 638/2012**

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant

Through: Ms. Suman Bagga and Mr. Siddhant Jaiswal, Advs.

versus

SURESH CHAND & ORS ..... Respondents

Through: Mr. O. P. Mannie, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Suresh Chand son of Tuhi Ram suffered injuries in a motor vehicular accident on 27.07.2008 at about 03:30 PM in the area of Income Tax Colony, Outer Ring road red light, Pitampura, Delhi, involving a tempo bearing registration no.DL-1LJ-1733. He presented a claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) on 02.09.2008 seeking compensation for the injuries suffered, impleading Mohan Sharma (the driver of the offending vehicle) and Hari Ram (the owner of the offending vehicle), as party respondents. In the claim petition, the appellant/insurance company was also impleaded as third respondent, it admittedly having issued an insurance policy

covering third party risk in respect of the offending vehicle for the period in question.

2. The tribunal concluded the inquiry and reserved its order on 15.10.2011 and eventually passed the award on 20.03.2012, granting compensation of ₹18,05,141/-, as per the following break up:-

(i) Compensation for pain & sufferings.	: 1,00,000/-
(ii) Compensation for expenses incurred on medical treatment, special diet, conveyance & attendant charges for future.	: 4,52,617/-
(iii) Compensation on account of loss of Income & future loss of earning capacity due to permanent disability.	: 8,32,524/-
(iv) Compensation on account of loss of enjoyment of amenities of life on account of disability.	: 2,00,000/-
(v) Compensation on account of inconveniences, hardship, discomfort, disappointment, frustration and mental stress in life.	: 1,00,000
(vi) Compensation on account of recurring inevitable expenses.	: 1,20,000/-
Total	: 18,05,141/-

3. The insurance company feeling aggrieved with computation of the compensation brought appeal at hand under Section 173 of MV Act and sought stay against the execution. By order dated 31.05.2012, it was directed to deposit the awarded amount with up-to-date interest in UCO Bank, Delhi High Court Branch in the name of the first respondent (claimant) and upon such deposit 60% of the awarded amount was

ordered to be released in favour of the claimant. It is stated that no amount was released in terms of the said direction. Upon notice being issued, it was reported on 03.04.2013 that the claimant had already died. This gave rise to the question of bringing his legal representatives on record. On 18.07.2013, a counsel appeared representing the interest of the claimant and time was granted for appropriate application to be moved for substitution of the legal representatives. On 24.07.2013, another advocate appeared on behalf of proposed legal representatives to press the application under Order 22 Rule-4 & 9 of Code of Civil Procedure, 1908 (CPC) having been preferred (vide CM Application no.11211/2013). In due course, upon no objection, the said application was allowed and the legal representatives of the claimants were substituted in his place by order dated 24.07.2013. It may be mentioned here that the legal representatives, thus substituted, include Smt. Guddi and Smt. Laxmi, wife and mother of the deceased claimant.

4. When this appeal was taken up for hearing, it was noted that neither the pleadings nor any document on record reveals the date of the death of the claimant. On this issue coming up, the learned counsel for appellant company submitted a photocopy of the death certificate issued by Senior Medical Officer of Public Health Centre, Hindon City (Karauli) dated 08.10.2011 certifying that the claimant had died on 04.10.2011. The learned counsel for the claimants submitted that the document thus placed on record by the counsel for the appellant is genuine and that the death had actually occurred on 04.10.2011.

5. As noted earlier, the claim petition had been filed by the injured person on 02.09.2008 and it was decided by judgment dated 20.03.2012.

The claimant, therefore, had died even before his claim petition could be adjudicated upon. Though the learned counsel representing the legal representatives of the deceased claimant tried to argue that the death had occurred after the judgment had been reserved, his submission to this effect is factually wrong as copy of judgment indicates that the tribunal had reserved its order on 15.10.2011.

6. This gives rise to the serious question of propriety of the conduct of the counsel who was assisting the tribunal at the stage of inquiry into the claim petition of Suresh Chand for compensation for the injuries suffered by him. Since the claimant had died, it was the bounden duty of the learned counsel to bring this fact to the notice of the tribunal. The legal representatives were required to be substituted even at that stage. No explanation worth the same has been given for this omission and default. Technically speaking, non-substitution of the legal representative would vitiate the further proceedings and the award passed by the tribunal, rendering it *non-est.*

7. Noticeably, copy of the death certificate presented by the counsel for appellant indicates the death purported to have occurred on account of "septicaemia as a result of paraplegia with bed sore" resulting from fracture of D2 vertebra suffered in road traffic accident on 27.07.2008. It is submitted by the learned counsel for the legal representatives of the claimant that death would relate back to the injuries suffered in the accident. If this were the position, as submitted by the learned counsel for the legal representatives, the death would have to be treated as one arising out of the motor vehicular accident. But then, it is again a lapse on the part of the learned counsel representing the claimants (now legal

representatives) that he did not take effective and timely steps to seek appropriate amendment.

8. In view of above facts and circumstances, the judgment being *non-est*, on account of death of the claimant even during the inquiry, the matter is remitted to the tribunal for appropriate proceedings in accordance with law. The legal representatives of the deceased claimant would be entitled to move appropriate application for incorporating amendment bringing on record subsequent events including about the death of the deceased claimant. Given the time that has already lapsed, they shall be obliged to do so on the date of first appearance before the tribunal hereby fixed.

9. The matter shall come up before the concerned tribunal for further proceedings in accordance with law on 31.03.2016.

10. The amount deposited by the appellant/insurance company shall be presently refunded to it along with statutory deposit, if made.

11. The appeal stands disposed of with above directions.

R.K. GAUBA
(JUDGE)

FEBRUARY 02, 2016/ssc