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

Date of Decision: 1st April, 2016

\+ **MAC.APP. 678/2012**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. L. K. Tyagi, Adv.

versus

DEEPAK CHAUHAN & ORS. ..... Respondents
Through: Mr. Saurabh Bhargavan, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company has challenged the directions in the judgment dated 16.02.2012 passed by the motor accident claims tribunal (tribunal) in accident claim case of the first respondent (the claimant), registered as Suit No. 322/2010, on the ground that the registered owner of the offending vehicle , it being Tata truck bearing No. HR 38 H 9680 (the offending vehicle), admittedly insured with it against third party risk, not having been held liable, the insurance company cannot be fastened with the liability to indemnify.

2. On perusal, it is found that in the petition presented before the tribunal besides the appellant insurance company (insurer) impleaded as third respondent, Kanahaiya Yadav and Sunil C. Bomb were impleaded as first and second respondents on the basis of averments that they were the driver

and owner respectively of the offending vehicle. The record further reveals that the claimant subsequently moved an application furnishing fresh particulars of the registered owner now describing him as Satinder Sirohi and consequently amended the cause title on 26.02.2008. It is further noted that, inspite of opportunities given, steps were not taken for service of the said party (second respondent before the tribunal), the default eventually resulting in order dated 27.04.2011 being passed by the tribunal dismissing the petition against the said second respondent for non-prosecution.

3. The learned counsel for the appellant insurance company submits that the vehicle was insured in the name of Sunil C. Bomb whose name was deleted and who stood substituted by Satinder Sirohi with whom the insurance company had no privity of contract. It is argued that against the aforementioned backdrop, the liability to pay compensation could not have been fastened against the insurance company.

4. The original claimant Deepak Chauhan has since died. His legal heirs have been substituted in his place. The learned counsel representing the said legal heirs of original claimant submits that while the appeal of the insurance company may be allowed and the judgment passed by the tribunal may be set aside, the matter may be remitted to the tribunal so that the registered owner of the offending vehicle and the person insured can be made a party in order that the claimant's legitimate expectation of compensation is not defeated.

5. In the interest of justice, the requests of both sides are allowed. The impugned judgment is set aside. The matter is remitted to the tribunal for further proceedings in accordance with law, in light of above submissions.

6. The parties shall appear before the tribunal on 2nd May, 2016.

7. By order dated 04.07.2012, the insurance company had been directed to deposit the awarded amount with upto date interest with the Registrar General whereupon it was directed to held in fixed deposit with UCO Bank, Delhi High Court Branch. The Registrar General shall presently refund the said amount with accrued interest to the insurance company with statutory deposit, if made.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 01, 2016
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