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

Date of Decision: December 08, 2016

+ **MAC.APP. 532/2014**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. JPN Shahi, Advocate

versus

SARITA & ORS Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned Award of 9th April, 2014 grants compensation of ₹3,56,171/- with interest @ 7.5% *per annum* to respondents-claimants on account of death of one *Ravinder Prasad* in a road accident on 22nd February, 2011. Since the facts are not in dispute, therefore, they are not required to be reproduced here.

Appellant-insurer in this appeal seeks the grant of recovery rights qua respondent No.7-*Mohan Mahto*, who is the owner of the motorcycle in question on the ground that the motorcycle was being driven by son of respondent No.7-*Mohan Mahto*, who was a minor.

Respondent No.7-*Mohan Mahto* was served by way of publication, but none had appeared on his behalf. As per order of 4th April, 2016, service is complete. Respondents are accordingly set *ex parte*.

A bare perusal of the record reveals that respondent No.7-*Mohan Mahto* (owner of the vehicle in question) had not appeared before learned Tribunal nor has appeared before this Court.

During the course of hearing, attention of this Court is drawn by learned counsel for appellant-insurer to the evidence of *Smt. Pallavee Thakra* (R2W1) and *SI Lakh Ram* (R2W2) to point out that from their evidence, it stands sufficiently proved that the vehicle in question was being driven by a minor and on this account, the minor and his father were fined by the concerned court.

In the face of the evidence of *Smt. Pallavee Thakra* (R2W1) and *SI Lakh Ram* (R2W2), which remains unchallenged, I find that learned Tribunal has erred in not granting the recovery rights to appellant particularly when respondent-owner of the vehicle in question has not come forward to contest the claim of appellant. Merely because untraced report has been filed in a criminal case will not justify the denial of recovery rights to appellant as the untraced report has been filed qua third

party.

In view of aforesaid, impugned order of 9th April, 2014 is modified to the extent of granting recovery rights to appellant qua respondent No.7-Mohan Mahto, the owner of the motorcycle in question.

To the aforesaid extent, this appeal is allowed.

The statutory deposit, if made, be refunded to appellant-insurer.

(SUNIL GAUR)
JUDGE

DECEMBER 08, 2016

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