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

Date of Decision: 25.05.2016

+ **MAC.APP. 727/2007**

ORIENTAL INSURANCE CO. LTD.

..... Appellants

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Advs.

versus

MANJU & ORS

..... Respondents

Through: Mr. Sudarshan Rajan & Mr. Arjun Gadhoke,
Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 02.06.2002, Raghibir Singh and members of his family were travelling in Maruti Car bearing registration No. DL 2CR 7112 (the car) driven by one Pankaj Kumar. The car met with an accident within the jurisdiction of police station Ram Nagar (Uttarakhand) where it rammed into a stationary truck. This resulted in deaths of Raghubir Singh and the car driver Pankaj Kumar. The members of the family dependent upon Raghuvir Singh, first to fourth respondents herein (the claimants), instituted an accident claim case (Suit No. 360/03/02) on 31.07.2002 seeking compensation under Section 166 of Motor Vehicles Act, 1988 (MV Act) impleading Shiv Nandan (fifth respondent herein), admittedly the owner of

the car and Oriental Insurance Company Ltd. (appellant), admittedly the insurer of the car for the relevant period as party respondents. The motor accident claims tribunal (tribunal) held inquiry in the course of which, amongst others, the insurance company put in contest submitting that its investigation had brought out that the car was being used as taxi, for commercial purposes, which, in the submission of the insurer, constituted a breach of terms and conditions of the policy. It, thus, prayed for exoneration.

2. Upon inquiry, and by judgment dated 30.08.2007, the tribunal upheld the case of the claimants that death of Raghubir Singh had occurred due to negligent driving of the car by Pankaj Kumar. It proceeded to award compensation in the sum of ₹ 24,45,120/- in favour of the claimants and directed the insurance company to pay with interest. The plea of the insurance company about breach of terms and conditions of the policy was, however, rejected.

3. The insurer, by the appeal at hand, at the hearing presses only for recovery rights, referring in this context to the evidence led primarily through R.K.Sharma (R2W1), Divisional Manager and M.S. Uppal (R2W2) investigator engaged by the insurance company.

4. Having heard the learned counsel for the appellant and having gone through the tribunal's record, this Court finds no substance in the appeal. The tribunal has examined the evidence on the above-mentioned issue at length in the impugned judgment. It noted that Shiv Nandan (the owner of the car) had appeared during inquiry (as R1W1) to depose that Pankaj Kumar and Pushpender Singh were friends and that the car had been allowed to be used for the fateful journey on friendship basis only. The

version of R1W1 was fully supported by that of Pushpender Singh appearing as (R1W2). The testimony of Divisional Manager (R2W1) is relevant mainly to bring home the fact that the insurance policy specifically prohibited use of the vehicle insured for commercial purposes. He referred to the report of R2W2 on the basis of investigation in which regard his version would be in the nature of hearsay. R2W2, on the other hand, also relies upon the report of investigation wherein he claimed to have recorded the statements of three occupants of the car including Bala Devi, Pushpa and Manju. Bala Devi and Pushpa were not examined by either side. Therefore, reference to their statements as may have been recorded by R2W2 is misplaced. Manju, widow of Raghubir Singh appeared in support of the claim case as PW-1 and during her cross-examination did concede that her husband had paid Rs. 1,200/- as fare for two passengers. But there is nothing on record to infer that the said payment had been collected by the owner of the car. The evidence of the owner of the car (R1W1) that Pankaj Kumar had taken the vehicle on friendly basis from him for a day's visit to distant town has not been shaken during the cross-examination. For all one knows, the said Pankaj Kumar may have abused the trust reposed and may have tried to reap some benefits out of the journey wherein he was expected to be at the steering wheel of the vehicle carrying a number of persons.

5. In the above facts and circumstances, the view taken by the tribunal in rejecting the plea of insurance company about breach of terms and conditions of the insurance policy cannot be faulted. Thus, the appeal is liable to be dismissed.

6. By order dated 10.01.2008, the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the

period specified whereupon execution of the impugned judgment was directed to be remain stayed. After taking enlargement of time, it was submitted on 11.09.2008 that the awarded amount had been deposited accordingly. By order dated 28.08.2009, 50% of the said amount was allowed to be released to the claimants subject to their furnishing adequate security to the satisfaction of the Registrar General of this court. By order dated 23.02.2001, the condition of furnishing security was waived. Presumably, half of the amount would have been released accordingly. The balance amount shall also be released now to the claimants in terms of the impugned judgment.

7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 25, 2016
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