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

Date of Decision: 16th March, 2016

\+ **MAC.APP. 872/2010**

ORIENTAL INSURANCE CO LTD ..... Appellant

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

versus

KIRAN SHARMA & ORS ..... Respondents

Through: Mr. Rajeshwar Kumar Gupta with Mr. Sachin Garg, Advs. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Kiran Sharma (first respondent) suffered injuries in a motor vehicular accident that occurred on 12.12.2005 involving truck bearing registration no.HR-38K-7325 (the offending vehicle). She brought a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) on 01.03.2006, it being registered as suit no.78/2010 (2006), seeking compensation, *inter-alia*, pleading that the accident had occurred due to rash/negligent driving of the offending vehicle by the third respondent herein (Yunus) and that she had consequently suffered permanent disability. She impleaded Inderjit Singh (second respondent), he being registered owner of the offending vehicle and Oriental Insurance Co. Ltd. (the appellant) since it was the insurer in its

respect against third party risk for the period in question. It may be mentioned here itself that inspite of notice being served, neither the driver (third respondent herein) nor the owner (second respondent herein) appeared to contest and, thus, were set *exparte* by the tribunal.

2. The tribunal held inquiry and on its basis upheld the claim of the first respondent (the claimant) about the accident having occurred due to rash/negligent driving of the truck and as also about the injuries and their effect. It awarded compensation in the sum of ₹1,36,008/- with interest in favour of the claimant. The insurer (the appellant) while contesting the proceedings before the tribunal had raised the issue that there was no valid or effective insurance policy in existence in as much as the cheque whereby the premium had been tendered had been dishonoured by the bank and that due intimation in this regard had been given to the insured (the owner). The insurance company led evidence before the tribunal by examining Navneet Goyal (R2W1), Senior Assistant, to prove the relevant facts and documents. It appears that the documents submitted through the said witness did not pertain to the insurance policy in question. In this view, the tribunal rejected the plea and directed the insurance company to satisfy the award.

3. The insurance company, by appeal at hand, pleaded that there was no contractual liability undertaken by it in respect of the offending vehicle in as much as no premium had been received as the cheque which had been tendered for payment of the premium had returned unpaid. It was submitted that the liability of the insurance company would arise only on the receipt of the premium amount in terms of the provisions contained in Section 64 of the VB of the Insurance Act. It also submitted that proper evidence could

not be adduced during the inquiry before the tribunal due to inadvertent error of the official witness. The insurance company prayed for opportunity to lead additional evidence to prove the necessary facts.

4. By order dated 20.12.2010, notice on the appeal was issued to the respondent and the execution of the impugned award was stayed subject to the insurance company depositing the entire awarded amount with up-to-date interest with the Registrar General within the period specified and upon such deposit being made it to be kept in FDR initially for a period of one year with automatic renewal.

5. The name of the respondent (the driver) was struck off from the array of the parties by order dated 11.07.2012, in as much as no relief is claimed against him. The second respondent (the owner) could not be served by ordinary mode. The service of the notice on him was effected by substituted mode. Inspite of the said service, he would not appear even in the proceedings arising out of the appeal at hand.

6. On 05.03.2014, the request of the claimant (first respondent) was considered and the learned single judge in seisin of the case was pleased to allow the deposited amount with accrued interest to be released to him in terms of the award passed by the tribunal subject to he furnishing a personal bond, observing, *inter-alia*, that in case the insurance company succeeds in the instant appeal, it would get recovery rights against the driver and owner of the offending vehicle.

7. On the request of the insurance company (appellant), it was allowed by order dated 11.07.2012 to lead additional evidence. Pursuant to the said

liberty granted, the insurance company examined Brij Mohan (AW1), senior divisional manager, on the strength of his affidavit sworn on 22.09.2014 and authorization (vide Ex.AW1/A). He proved that the owner of the offending vehicle (second respondent) had tendered the premium in respect of the insurance policy by cheque no.581049 (Ex.AW1/1) which when presented at the bank was returned dishonoured vide cheque returning memos (Ex.AW1/2 & Ex.AW1/3).

8. There is no contest whatsoever by the owner/insured or the driver. While there can be no doubt about the fact that the insurance company cannot claim to be absolved against the third party claim under the insurance policy, its remedies against the insured are still available because it did not receive any premium and, thus, there is no valid contract, there being no consideration in terms of Section 64 VB of the Insurance Act [*Oriental Insurance Co. v. Inderjit Kaur* 1998 ACJ 123; *New India Assurance Company Ltd. v. Rula* 2000 ACJ 630 and *New India Insurance Co. Ltd. v. Shamsed* 2001 ACJ 585].

9. In above view, the appeal of the insurance company is allowed. It is granted rights to recover the amount paid to the claimant in this case from Inderjit Singh, the owner (the insured) of the offending vehicle. For such purposes, it is at liberty to take out appropriate proceedings before the tribunal.

10. The statutory amount, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

MARCH 16, 2016/ssc