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

Date of Decision: 12th February, 2016

+ **CM (M) No.487/2015 & CM No.9590/2015**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

BHANWAR KHAN & ORS. Respondents

Through: Ms. Pinki Talukdar, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By order dated 06.01.2015 in the course of inquiry on claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) registered as suit No.138/2014, the Motor Accident Claims Tribunal (the Tribunal) closed the opportunity for evidence on behalf of the petitioner/appellant insurance company which had been contesting as third respondent before the Tribunal. It is the said order which is the bone of contention in the petition at hand.

2. In spite of service, other respondents have not appeared and the petition is contested only by third respondent herein (Ramesh Kumar) who is stated to be the owner (insured) in respect of offending vehicle.

3. Having heard both sides and gone through the record of the Tribunal, it does appear that the petitioner company has not been diligent in assisting the Tribunal in expeditious inquiry. The claimant had closed his evidence on 14.01.2013. Thereafter, the insurance company was called upon to lead evidence. There were defaults in taking timely steps

and even cost of Rs.22,000/- was imposed on 18.09.2013 followed by further opportunities being granted.

4. It does appear that the insurance company did take some steps by securing processes to be served on the witnesses *dasti*. It also does appear that at least one of the said witnesses though served did not appear. For 06.01.2015, indeed, the processes taken *dasti* were not returned.

5. Be that as it may, in the facts and circumstances of the case and having regard to the contentions of the insurance company which has raised some statutory defences before the tribunal, it is desirable that it be given another opportunity to adduce its evidence.

6. For the foregoing reasons, the impugned order is set aside subject to cost of Rs.25,000/- which shall be paid to the claimant on the date next fixed before the Tribunal.

7. The Tribunal shall now fix a suitable date convenient to its calendar for giving an opportunity to the insurance company to get the witnesses served. Needless to add, if the witnesses do not turn up despite service, the Tribunal will be duty bound to issue duress processes and the non-appearance by the witnesses will not be taken as default of the party which summons them.

8. The petition is disposed of with these observations.

9. The Tribunal's record be returned with copy of the judgment.

10. Copy of the order be also given *dasti*.

R.K. GAUBA
(JUDGE)

FEBRUARY 12, 2016
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