

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

Date of decision: March 06, 2017

+ **MAC.APP. 99/2009**

UNITED INDIA INSURANCE CO.LTD. Appellant

Through: Mr. Zahid Ali, Advocate for Mr.
A.K. De, Advocate

Versus

PREETI MOHAN & ANR.Respondents

Through: Mr. Sanjay Kumar, Advocate for
respondent-claimant

CORAM:HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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Impugned Award of 25th October, 2008 grants compensation of ₹5,04,500/- with interest @ 7.5% *per annum* on account of death of one *Jayant Jagdish Menon* in a road accident on 11th June, 2009. The facts as already noted in impugned Award need no reproduction. Suffice to note that vehicle in question was having a third party insurance. On the basis of evidence recorded, impugned Award has been rendered. Impugned Award declines appellant's prayer for grant of recovery rights on the ground that decisions cited do not advance the case of appellant. However, it is noted in impugned Award that the vehicle in question was being driven by deceased himself and was insured for third party rights.

Learned counsel for appellant relies upon Supreme Court's decision in *Oriental Insurance Company Limited v. Sudhakaran K.V. and Others*, (2008) 7 SCC 428 to submit that the liability to pay compensation is of owner of vehicle in question and not of Insurer. Thus, it is submitted that impugned Award needs to be suitably modified to grant recovery rights to appellant.

Respondent No.2-owner of vehicle in question is deemed to be served as per order of 9th November, 2009. Respondent No.2 has chosen not to contest this appeal.

With the assistance of learned counsel for parties, impugned Award and evidence on record has been perused. Supreme Court in *Sudhakaran (supra)* has reiterated as under: -

*“The law which emerges from the said decisions, is:
(i) the liability of the insurance company in a case of this nature is not extended to a pillion-rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion-rider; (iii) the pillion-rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.”*

Applying the afore-noted dictum to the facts of the instant case, refusal to grant of recovery rights to appellant by learned Tribunal is unjustified. Accordingly, impugned Award is modified to the extent of granting recovery rights to appellant.

While entertaining this appeal, it was directed that awarded amount be kept in FDR by learned Tribunal and be retained till the disposal of this appeal. This appeal is disposed of while granting recovery rights to appellant with direction that awarded amount, which is kept in FDR by learned Tribunal, be released to respondent-claimant in the manner as indicated in impugned Award.

Statutory deposit, if any, be refunded to appellant as per rules.

The appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 06, 2017

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