$~R-165

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

Decided on: 6th September, 2017

\+ MAC.APP. 68/2010 and CM APPL.2213/2010 (Order 41 Rule 27 CPC), CM APPL.2214/2010 (delay)

NEW INDIA ASSURANCE COMPANY LIMITED..Appellant
Through: Mr. Kanwal Chaudhary, Advocate

versus

DHARMENDER YADAV & ORS. ..... Respondents
Through: Nemo.

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

JUDGMENT (ORAL)

1. On the claim petition of the first respondent (MACT Claim Petition No.433/2008), instituted on 16.02.2005, the Tribunal after inquiry, by judgment dated 08.09.2009, awarded compensation in the sum of Rs.72,300/- and directed the insurance company to pay the same, it being compensation on account of injuries suffered in a motor vehicular accident that occurred on 18.01.2005 involving negligent driving of tempo/dumper bearing registration No.HR-55B-1466, admittedly insured against third party risk with the appellant insurance company (insurer). Concededly, during the inquiry before the Tribunal, the insurance company did not lead any evidence in defence.

2. By the appeal at hand, the insurance company seeks recovery rights on the ground that the vehicle was not covered by valid permit.

Along with the appeal, the appellant has come up with an application (CM APPL.2213/2010) seeking permission to lead additional evidence invoking Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC). In the said application, it has not been explained in any manner as to why evidence to above effect could not be led before the Tribunal.

3. The provision of Order 41 Rule 27 CPC cannot be availed as of right and such liberty as is prayed cannot be granted only for the asking. In absence of any clear case of due diligence having been exercised, there being no explanation as to why such evidence could not be brought before the Tribunal, during inquiry, it spanning over four years and seven months, the application (CM APPL.2213/2010) for additional evidence is rejected. Consequently, the appeal must fail. It is dismissed.

4. By order dated 04.02.2010, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Tribunal within the period specified. The amount shall now be released with accrued interest to the claimants in terms of the impugned award.

5. The statutory deposit shall be refunded to the appellant.

6. The appeal along with accompanying application stands disposed of in above terms.

7. *Dasti.*

R.K.GAUBA, J.

SEPTEMBER 06, 2017/vk