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

Decided on: 08th August, 2017

+ CM(M) 155/2017

THE NEW INDIA ASSURANCE CO LTD Petitioner

Through: Mr. J .P.N. Shahi, Advocate

Versus

SUBHASH SHARMA & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By judgment dated 15.12.2015, on the accident claim petition (MACT 510/2006) of the third respondent (claimant), while upholding his case for compensation for injuries suffered in a motor vehicular accident, statedly caused due to the negligent driving by the second respondent (the driver) of a motor vehicle bearing registration no.DL-1LE-5728 of the first respondent (the owner), the liability to pay the awarded amount of Rs.3,61,440/- with interest was fastened against the petitioner (insurer) though with the observations (at page 12 in the concluding sub-paragraph under the heading of “*liability*”) that it may recover the same from the driver or the owner, such observations being in contrast to the conclusion reached earlier (in sub-paragraph immediately preceding thereto) whereby finding was

returned that the insurance company was “*not entitled to recovery rights*” since the owner had satisfied himself that the driver had a valid licence and was driving competently. The Motor Accident Claims Tribunal (Tribunal) made corrections in the award at the stage of execution (Execution petition no.28/2016) taken out by the insurance company to enforce the recovery rights by order dated 18.11.2016 recalling the grant of recovery rights.

2. The petition at hand challenges the order dated 18.11.2016 on the ground that the Tribunal could not have reviewed the earlier order in the manner done. It is the grievance of the insurance company that if the original judgment had been on the lines as is the modification ordered by directions in order dated 18.11.2016, it would have exercised the right of appeal against such judgment and that the modification after almost a year has deprived it of the right to appeal.

3. The order dated 18.11.2016, in fact, is not an order of review in the sense it is made out to be. It is more of an order correcting the clerical error in the original judgment. A finding declining the recovery rights had been earlier returned with detailed reference to the facts of the case, the evidence led thereupon, as indeed the relevant law on the subject. The clerical error occurred in the concluding paragraph under the heading of “*liability*” wherein the words “*may thereafter recover the same*” were added.

4. Be that as it may, the propriety of the earlier conclusion declining the recovery rights has been examined by the court in the light of facts and circumstances, which were brought out during the inquiry. It is noted that the owner had clearly proved that at the time

of being engaged the driver had been put to driving test and he was employed as the driver only after he had successfully undergone such test. Following the law laid down by the Supreme Court in *United India Insurance Company Ltd. V. Lehu & Ors.* (2003) 3 SCC 338 to which the tribunal made a reference and indeed applying the “*rule of main purpose*” and the concept of “*fundamental breach*” as envisaged in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297, the finding returned by the tribunal declining the recovery rights cannot be faulted.

5. The petition is devoid of substance and is dismissed.

R.K.GAUBA, J.

AUGUST 08, 2017

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