$~R-477

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

Decided on: 14th November, 2017

\+ MAC APPEAL 328/2012

THD ORIENTAL INSURANCE COMPANY LTD... Appellant
Through: Mr. A.K. Soni, Adv.

versus

ASHA RAM YADAV & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. On the accident claim case (suit no. 170/10) of the first respondent (the claimant), the tribunal, by its judgment dated 07.12.2011, held that he had been injured, giving rise to cause of action to seek compensation, on account of motor vehicular accident that had taken place at about 6.30 a.m. on 12.08.2007 due to negligent driving of motor vehicle described as Tata Dumper bearing registration no. HR 55E 6416 by the second respondent (driver) holding him to be the principal *tort-feasor* and the third respondent, concededly the registered owner of the said vehicle, vicariously liable, jointly and severally. Since the vehicle in question was insured against third party risk for the period in question with the appellant (insurer),

the liability to pay the compensation determined by the tribunal was fastened upon it.

2. The appeal at hand is pressed by the insurer to argue that it is a case of contributory negligence on the part of the claimant on which the finding deserves to be recorded with consequences to follow. Having heard the learned counsel for the insurer and having gone through the tribunal's record, this court finds no substance in the said submission.

3. The claimant was employed as Assistant Sub-Inspector with Delhi Police during the relevant period. He was on official duty at the place where the accident occurred, accompanied by constable Ishwar Singh, both having arrived there on the motorcycle. As per the version of constable Ishwar Singh, before the police in the course of investigation into the corresponding case, and of PW-1, before the tribunal, read together, the victim was crossing the road from one side to the other to have a vehicle unauthorisedly and improperly parked removed. It is during the said venture that he came to be hit by the vehicle insured with the appellant, the version of the claimant being that the vehicle was driven in a rash and uncontrolled speed. In the pleadings, the driver of the offending vehicle had tried to shift blame on to the claimant by stating that it was he who was negligent as he was crossing the road by not waiting for the oncoming traffic, his plea also being that he was moving at a normal speed. The evidence of the claimant, however, has remained unimpeached, particularly because the driver of the offending vehicle was not examined in the inquiry before the tribunal. The plea that the speed of the dumper was within

limits cannot be accepted for the simple reason that if this was the case the driver would have been in a position to avoid collision against the person crossing the road on foot from one side to the other.

4. The appeal is, thus, found devoid of substance and dismissed.

5. By order dated 26.03.2012, the insurance company had been directed to deposit 75% of the awarded amount with upto date interest with the Registrar General. By subsequent order dated 01.06.2012, 50% of the deposited amount was permitted to be released to the claimant. The balance shall now be released to the claimants in terms of the judgment of the tribunal. The insurance company shall deposit the balance amount of the award with upto date interest within thirty days with the tribunal so as to be made available to be released to the claimant.

6. The statutory amount shall be refunded, only after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

NOVEMBER 14, 2017
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