* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: March 22, 2017

\+ **MAC.APP. 300/2008 & C.M.6869/2008**

THE NEW INDIA ASSURANCE CO. LTD ..... Appellant
Through: Ms. Jyoti Nagpal and Mr. Alok Kumar Srivastav, Advocates

versus

SUMAN GUPTA & ORS .....Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **(ORAL)**

Vide impugned Award of 1st March, 2008, Motor Accident Claims Tribunal, Delhi *(hereinafter referred to as 'Tribunal')* grants compensation of ₹2,94,900/- with interest @7% *per annum* on account of death of *Pramod Gupta,* driver of scooter in question in a road accident on 9th September, 2003. The facts as noted in impugned Award need no reproduction. Suffice to note that the deceased was driving the scooter in question when it had met with an accident. Respondent No.6, owner of scooter in question, has not deposed before learned Tribunal and even appellant had also not deposed before learned Tribunal. On the strength of evidence led, impugned Award has been rendered.

In this appeal, contesting respondent No.6 has chosen not to appear despite service. It is so evident from order of 26th September, 2008. As per order of 26th September, 2008, service is complete.

Learned counsel for appellant-Insurer assails impugned Award on the ground that deceased was not a third party and so, appellant, who is the Insurer of scooter in question, is not liable to pay the awarded amount. To submit so, reliance is placed upon Supreme Court's decision in *Oriental Insurance Company Limited v. Meena Variyal & Ors.,* (2007) 5 SCC 428.

Upon hearing and on perusal of impugned Award, evidence on record and the insurance policy *(Annexure-B)* in particular, I find that scooter in question was having third party insurance which covered driver and owner as well. There is nothing on record to prove that the deceased was agent of respondent-owner of vehicle in question. So, in such a case, it has to be taken that deceased was covered under the insurance policy.

In *Meena Variyal (supra)* the victim was found to be not covered by the Insurance Policy and so owner of vehicle was directed to pay compensation but in the instant case, driver and owner of scooter in question were covered and hence are entitled to compensation. So, reliance placed upon decision in *Meena Variyal (supra)* is of no avail.

Before parting with this judgment, I find that learned Tribunal has incorrectly framed issue No.1 regarding accident in question taking place due to rash and negligent driving of respondent-*Mukesh Kumar Bansal*, who is the owner of vehicle in question. It is so said because evidence on record does not indicate that owner was driving the vehicle in question. This incorrect framing of issues has no bearing on the fate of this appeal.

In view of aforesaid, finding no substance in this appeal and the pending application, they are dismissed.

(SUNIL GAUR)
JUDGE

MARCH 22, 2017
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