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

Decided on: 11th August, 2017

+ MAC.APP. 712/2017 and CM APPL.28796-28799/2017

BIRENDER

..... Appellant

Through: Ms. Renu Kaushik, Advocate
with Mr. S. Mohit, Advocate

versus

ORIENTAL INSURANCE CO LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant admittedly was the registered owner of the truck bearing registration No.HR-38E-2547, when it came to be involved in a motor vehicular accident that occurred on 28.05.2005 due to collision against motorcycle bearing registration No.DL-3SQ-2819 resulting in injuries being suffered by one Vikram Kaim, who instituted accident claim case (Suit No.347/2005) on 05.09.2005 seeking compensation impleading him (the appellant), Narender Singh (described as the driver) and Oriental Insurance Company Limited (the insurer), it admittedly being insurer of the truck against third party risk for the period in question at the instance of the appellant herein.

2. It is submitted by the learned counsel for the appellant that notice was received of the said claim proceedings by him but, under

some improper advice, he did not appear and participate and, thus, was set *ex parte*. The proceedings before the tribunal leading to inquiry resulted in judgment dated 19.12.2012, whereby compensation was awarded in favour of the claimants, the said computation being modified by subsequent order dated 17.04.2013 at the instance of the insurer.

3. The insurer in the course of inquiry before the tribunal had pleaded breach of terms and conditions of the insurance policy on the ground that the truck had been brought to Delhi without a valid permit. The tribunal considered this submission in the light of evidence and adjudicated upon it in the following manner:-

“20. On the question of liability, it is submitted by counsel for insurance company that vehicle was not holding valid permit to ply vehicle in Delhi on the date of accident. This amounts to fundamental breach of condition of policy, thus insurance company is liable to pay compensation. In support of its case, the insurance company got examined, Sh. Abhinash Kumar, as R3W1 who proved the attested copy of policy and also deposed that notice under Order 12 R.8 CPC was given to the owner by the insurance company for the production of permit to ply vehicle in Delhi on the date of accident and the same was not supplied. Non production of permit to run the commercial vehicle such a defence is legally available to the insurance company under Section 149 of MV Act. The policy issued for the offending vehicle was subject to a condition that vehicle should be driven under a valid permit. However, the owner has failed to produce valid permit hence, there is breach of a fundamental conditions and terms of policy. In view of the settled law that insurance company is liable qua third party and it shall however, vest with a right to recover the amount of liability from insured after depositing the compensation

awarded to third party. As discussed above, since there was no permit issued for the offending vehicle to ply as commercial vehicle, so insurance company shall have right to recover the same from respondent no.2. Accordingly, insurance company shall deposit the amount of compensation and then after depositing shall have right to recover from respondent no.2 in whose name vehicle is registered.”

4. The appellant seeks to assail the recovery rights which have been granted to the insurer by the tribunal as per the findings noted and recorded above. He has come up with the appeal with an application for condonation of delay of 1320 days seeking to put the entire blame on to an advocate who had been engaged by him on 17.04.2013.

5. There is no explanation, however, as to why the appellant would not appear or participate in the inquiry before the tribunal. On being asked, the learned counsel for the appellant submits that truck was not covered by any valid permit for Delhi on the relevant date.

6. In the above facts and circumstances, the appeal and the applications filed therewith are found devoid of substance.

7. Dismissed *in limine*.

R.K.GAUBA, J.

AUGUST 11, 2017

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