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

Decided on: 3rd November, 2017

\+ CM (M) 570/2013

UNITED INDIA INSURANCE CO. LTD. ..... Appellant

Through: Mr. Sameer Nandwani with Mr. P. Acharya, Adv.

Versus

SMT. CHAND KUMARI & ANR. ..... Respondents

Through: Mr. Deepak Maharaj, Adv. for R-1 & 2.

\+ MAC.APP. 457/2013

UNITED INDIA INSURANCE CO. LTD. ..... Appellant

Through: Mr. Sameer Nandwani with Mr. P. Acharya, Adv.

Versus

SITALI DEVI & ORS. ..... Respondents

Through: Mr. Deepak Maharaj, Adv. for R-1 & 2.

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

JUDGMENT (ORAL)

1. Accident Claim case (MACT No. 73/2012) had been instituted on 10.01.2012 by four claimants, they being Sitali Devi, Chand Kumari, Sunny Kumar, Sonu Kumar, being the mother, wife

and minor sons respectively of Shyam who had died in a motor vehicular accident that had occurred on 12.10.2011. The claim case was decided by the tribunal, by judgment dated 01.03.2013, returning a finding that the accident had occurred due to negligence on the part of Ashok Kumar (fifth respondent in MAC No. 457/2013) while driving truck bearing registration no HR 38 G 9548, which was admittedly insured against third party risk with United India Insurance Company Ltd. (appellant in MAC Appeal No. 457/2013) and petitioner in CM(M) 570/2013. The said vehicle was registered in the name of Harvindra Singh (fourth respondent in appeal), the said driver, owner and insurer had been impleaded as party respondents before the tribunal.

2. The tribunal held the driver and owner jointly and severally liable to pay compensation determined in the sum of Rs. 14,56,750/-, fastening the liability on the insurer to pay the said amount, rejecting its plea about breach of terms and conditions of the insurance policy.

3. It appears that Master Sunny Kumar, one of the sons of the deceased Shyam, had died on 21.10.2012 during the pendency of the inquiry before the tribunal. This fact was brought to the notice of the tribunal, after the inquiry had been concluded and the award had been passed. The tribunal by its subsequent order dated 09.05.2013, revised the directions passed in the judgment dated 01.03.2013, apportioning the amount earlier given to Master Sunny Kumar equally amongst his mother Chand Kumari and sibling Sonu Kumar, two of the other three claimants.

4. The insurance company filed MAC Appeal no. 457/2013 questioning judgment of the tribunal, particularly assailing the finding on the issue of negligence. In the appeal, it impleaded Sitali Devi (mother), Chand Kumari (wife) and Master Sunny Kumar (son) as first, second and third respondents. It also questioned the subsequent order dated 09.05.2013, by CM (M) 570/2013, on the ground that such order could not have been passed after the judgment had been rendered. In the said petition Chand Kumari (wife) and Master Sunny Kumar (the son) were shown as first and second respondents. Obviously, Master Sunny Kumar could not have been impleaded as a party to the appeal, or to the petition, since, to the knowledge of the insurance company, he had already died on 21.12.2012, which was the reason for the order dated 09.05.2013 being passed by the tribunal.

5. During the pendency of these matters, Chand Kumari has also died. This fact was brought to the notice of the counsel for the insurance company by the counsel representing the claimants on 09.03.2017. In fact, on 09.03.2017, in the course of hearing on CM (M) 570/2013, the counsel representing the claimants pointed out that both the persons shown in the array as respondents had passed away. He also pointed out that Master Sonu Kumar, the surviving child of the deceased Shyam had not been made a party.

6. The counsel representing the insurance company against the above backdrop had sought time to obtain instructions. For such purposes, the matter was adjourned. By directions in both these matters issued by separate orders of 09.03.2017, the counsel for claimants was called upon to make available to the insurance

company, the particulars of legal heirs of Chand Kumari. It is admitted that the counsel for the claimants had sent a communication dated 10.08.2017, by post, to the counsel for insurance company whereby he, *inter alia,* informed that Sonu Kumar was the only legal heir surviving after the death of Chand Kumari. It also pointed that he had not been impleaded as a respondent.

7. Inspite of the above due intimation, and opportunity, the insurance company has neither taken any steps to implead Sonu Kumar in these proceedings nor to substitute Chand Kumari by her legal heirs in terms of obligation under Order 22 Rule 4 of Code of Civil Procedure, 1908.

8. In these circumstances, the appeal and the petition at hand are found not only defective on account of non-joinder but also to have abated. These proceedings arising out of appeal and petition are, thus, closed.

9. By order dated 20.05.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General who was permitted to release 75% of the awarded amount in favour of the claimants, the balance required to be put in fixed deposit receipt with UCO Bank, initially for a period of six months with provision for auto renewal.

10. In the given fact-situation, the surviving claimant(s) are given liberty to approach the tribunal, by appropriate application, for re-adjustment of the apportionment whereafter the tribunal will issue necessary directions for release of the balance lying in deposit.

11. The statutory amount by the insurance company may be refunded.

R.K.GAUBA, J.

NOVEMBER 03, 2017
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