$~R-512

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th November, 2017

\+ **MAC. APP. 593/2012**

UNITED INDIA INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate.

versus

MUKESH KUMAR SONI & ORS .....Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The Tribunal, while fastening the liability upon the appellant (insurer) to pay compensation in favour of the first respondent (the claimant) on his accident claim case (MACT Suit No. 353/08), by judgment dated 01.03.2012, for injuries suffered by him in a motor vehicular accident that had occurred on 01.08.2008 due to negligent driving of three wheeler scooter (TSR) bearing registration No. DL-1RE-5379, rejected its plea that there was no insurance contract for the reason that the cheque issued by the second respondent (the insured) to tender the premium for purchasing the insurance policy covering third party risk had returned unpaid, observing in such regard that there was no evidence led by it to substantiate such plea.

2. The appeal against the judgment of Tribunal is pressed at the hearing only to seek opportunity to lead additional evidence, and in

case the insurance company were to establish the absence of privity of contract on the ground of "want of consideration", for recovery rights to be granted against the second respondent.

3. The appeal was admitted and put in the list of "*Regulars*" as per order dated 18.03.2015. When it is taken up for hearing today, there is no appearance on behalf of the respondents.

4. Learned counsel for the appellant has been heard and the Tribunal's record perused.

5. In the given facts and circumstances, it appears just and proper that the appellant is granted one more opportunity to prove want of consideration. After all, if no premium has been paid, the owner of the vehicle cannot be allowed to take any advantage from the insurance company it being a custodian of public money.

6. While clarifying that the insurance company would continue to bear the liability towards the claimant, its plea for recovery rights against the second respondent is remanded to the Tribunal for further inquiry and fresh adjudication. For such purposes, the concerned parties are directed to appear before the Tribunal on 22nd December, 2017. The Tribunal shall issue fresh notices to the second respondent (owner) as there was no appearance on its behalf at the hearing on the appeal.

7. By order dated 25.05.2012, the insurance company had been directed to deposit the awarded amount with up to date interest with UCO Bank, Delhi High Court Branch. By a subsequent order dated 18.03.2015, 50% of the said deposited amount was permitted to be released in favour of the claimant. Since the plea for recovery rights

needs further inquiry in which only the insurer and the registered owner of the vehicle are expected to participate, the balance lying in deposit is also directed to be released to the claimant in terms of the judgment of the Tribunal.

8. The statutory deposit shall be refunded.

R.K.GAUBA, J.

NOVEMBER 20, 2017
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