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

Decided on: 08th September, 2017

+ MAC.APP. 622/2013

IFFCO TOKIO GENERAL INSURANCE CO
LTD

.... Appellant

Through: Mr. Harsh, Advocate

Versus

INDRA SHARMA & ORS

..... Respondents

Through: Mr. Vishwa Ranjan Kumar,
Advocate for R-1 to 4

+ MAC.APP. 623/2013

IFFCO TOKIO GENERAL INSURANCE CO
LTD

..... Appellant

Through: Mr. Harsh, Advocate

Versus

SUMAN & ORS

..... Respondents

Through: Mr. Rajnish K. Jha, Advocate for
R-2 to 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 19.01.2009, a motor vehicular accident took place involving two vehicles, one being car bearing registration no.DL-CF-0891 (the

car) and the other, a tanker bearing registration no.PB-04 9573 (tanker), it becoming subject matter of investigation by the police through first information report (FIR no.16/2009) of police station Tanda in District Hoshiarpur, Punjab for offences under Sections 279, 304A, 337, 338, 427 of Indian Penal Code, 1860. Several persons were injured in the said accident including Hari Om and Mukesh Kumar Sharma, both of whom died in the consequence. The accident claim cases on account of the said two deaths, one (MACT no.107/09) brought by members of the family dependent on Hari Om, they being first to sixth respondents in MACA 623/2013 and the other (MACT 267/09/2010) by the members of the family dependent on Mukesh Kumar Sharma, they being first to fourth respondents in MACA 622/2013, each seeking compensation on the averments that the accident had occurred due to the negligent driving of the tanker by Sonu, also described as Sukhwant Singh @ Sonu, he being impleaded as first respondent in the said claim cases. The claimants in the said two cases also impleaded Santokh Singh, the registered owner of the tanker as second respondent, in addition to the appellant / insurance company (insurer) which had concededly issued an insurance policy covering third party risk in respect of the tanker for the period in question.

2. The inquiries were held in the said two cases, almost parallel to each other, each leading to separate judgments being passed on 11.01.2013 accepting the case of the respective claimants for compensation on account of the negligence on the part of the tanker driver holding him and the said owner jointly and severally liable, the

compensation determined being made payable by the insurer (appellant) due to its statutory and contractual liability.

3. It appears that in the course of the inquiries, the insurer had taken the plea that the owner was obliged to prove that the tanker was on road under a valid permit, the submission being that in absence of such proof, it should be construed to be in breach of the terms and conditions of the insurance policy, giving right to the insurer to seek exoneration. The tribunal gave opportunities in each case to the insurer to lead evidence. The proceedings, however, reveal that there was utter negligence on the part of the insurance company to prosecute its defence diligently. At one stage, it had even been set *ex-parte* on account of the failure on the part of its representative or counsel to appear. It is noted that the application for setting aside the *ex-parte* proceedings was also moved but that too received similar neglect as it remained pending, adjournments having been taken, with the counsel even indicating at one stage his unavailability when the case was listed, thus, holding the proceedings to ransom.

4. Be that as it may, eventually the insurance company examined one witness, Sanjeev Srivastava (R3W1), its Manager (Legal), he deposing on the strength of his affidavit (Ex. R3W1/A) on 30.08.2012, his evidence having been taken on board on the file of the claim case arising out of the death of Hari Om, note only being taken in the proceedings in the other case of such evidence having been adduced.

5. Technically speaking, the insurance company was obliged to lead evidence in both the cases independently as the same had not been clubbed at any stage. Be that as it may, given the fact that the

tribunal did take a note of such evidence having come on record in the other case, this court has considered the merit and effect of the said evidence for purposes of both the cases.

6. It is noted that R3W1 Sanjeev Srivastava (Manager (Legal) did depose about notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) having been issued to the registered owner Santokh Singh and the same having been discharged by post vide receipt (Ex. R3W1/2). But the witness was conspicuously silent as to the status of service of said notice. He would not speak about either the delivery or return or even non-return of the postal article. It is not a question of the opposite party putting a question to him to seek clarity on this aspect. Burden was on the insurance company which was claiming certain rights flowing from such material to prove all the necessary facts. With this state of the evidence, it cannot be assumed that notice had been duly served on the registered owner.

7. It does appear that in a third claim case (MACT 233/2009 Rakesh Bansal vs. Sonu and Ors.), decided by another tribunal by judgment dated 21.10.2016, recovery rights were granted, the said claim having also arisen out of the same accident. The said rights assumably would have been granted on the basis of evidence led in those proceedings of which the benefit cannot be taken in the separate proceedings in hand.

8. In the above view, these appeals are found devoid of substance and, accordingly, they are dismissed. A part of the amount of compensation deposited by the insurance company in terms of interim

orders was released, the balance kept in fixed deposit receipts. The balance amount shall now be released to the claimants.

9. The statutory amounts shall be refunded after proof is shown of the awards having been satisfied.

R.K.GAUBA, J.

SEPTEMBER 08, 2017

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