$~R-534

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 22nd November, 2017

\+ MAC.APP.722/2012 & CM 11714/2012

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Tarkeshwar Nath with Mr. Saurabh Kumar Tuteja, Advocates

versus

SMT GUDDO & ORS .....Respondents

Through: None.

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

JUDGMENT (ORAL)

1. The liability to pay compensation on account of death of Rahul Singh in a motor vehicular accident that occurred on 23.11.2007 was fastened by the Tribunal, by its judgment dated 23.02.2012 on the accident claim petition (Suit No. 209/10) of first and second respondents (collectively, the claimants), on the appellant (insurer), it admittedly having issued an insurance policy covering third party risk in respect of the offending vehicle, described as tractor bearing registration No. RJ-02-1R-2525. As per the evidence led, the tractor was driven in a negligent manner by the third respondent, it being registered in the name of the fourth respondent. Both the third and fourth respondents were party to the claim petition. The insurance

company had taken the plea of breach of terms and conditions of the insurance policy on the ground that there was a need for permit to be taken for use of the tractor with trolly as a transport vehicle and in the absence of such permit it cannot be called upon to indemnify. It led evidence by examining Sh. V.D. Talwar (R3W1), its administrative officer. The Tribunal, however, failed to even consider the issue arising out of the plea to above effect of the insurance company. This renders the judgment to the extent liability was thereby placed at the door of the insurance company, bad in law.

2. The fourth respondent had been duly served in the appeal and even appeared through counsel at some stage. However, when the matter became ripe for consideration they stopped appearing. The appeal was directed to be put in the list of "*Regulars*" to come up on its own turn as per order dated 14.03.2016. In the above facts and circumstances, it would be unjust and unfair to withhold the compensation awarded to the claimants. The plea of the insurance company can be examined so as to consider whether it deserves to be granted recovery rights against third and fourth respondent. Since the Tribunal has failed to take a call on this issue, the proper course would be to remit the matter for such purpose.

3. Thus, the impugned judgment is set aside to the extent liability was thereby fastened against the insurance company without considering its plea of breach of terms and conditions of the insurance policy. The Tribunal is directed to consider the evidence led before it and take a decision on this issue followed by suitable directions, granting or declining the recovery rights, as may be justified.

4. By order dated 13.07.2012, the insurance company was directed to deposit the entire awarded amount with interest. By subsequent order dated 29.01.2014, 60% of the amount was permitted to be released to the claimants. The balance shall also now be released to the claimants in terms of the judgment of the Tribunal.

5. The appellant, the first respondent and the fourth respondent are directed to appear before the Tribunal on 8th January, 2018 for further proceedings in above matter. Since third and fourth respondents have not appeared at the hearing of the appeal, the Tribunal will secure their presence by requisite notices before proceeding further.

6. The appeal stands disposed of in above terms.

7. The statutory deposit shall be refunded.

R.K.GAUBA, J.

NOVEMBER 22, 2017
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