$~R-368

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

Decided on: 27th October, 2017

\+ MAC APPEAL No. 598/2011

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. L.K. Tyagi, Adv.

versus

BHARTI BHAMBHANI & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. By judgment dated 21.05.2011, the motor accident claims tribunal while deciding the accident claim case (case no. 940/2008) instituted on 04.08.2008 by the first to fourth respondents (collectively, the claimants) held that Harish Bhambani had died as a result of injuries suffered in motor vehicular accident that occurred on 02.11.2007 due to negligent driving of motorcycle bearing registration no. DL 9SU 8790 (the motorcycle) by the fifth respondent, admittedly a minor at the relevant point of time not holding a valid or effective driving licence. The compensation awarded by the said judgment nonetheless was directed to be paid by the appellant (insurer) for the reason the motorcycle was insured against third party risk with it for the period in question at the instance of the sixth respondent who

admittedly is the registered owner of the said vehicle, rejecting the contention of the insurance company about breach of terms and conditions of the insurance policy accepting the explanation of the registered owner based, *inter alia,* on her own testimony she having appeared as witness (R2W1) seeking corroboration from the word of Arun Kumar (R2W2).

2. The insurer by the appeal at hand submitted that the explanation offered by the registered owner should not have been accepted as the same had been raised after a gap of five days.

3. Having heard the learned counsel for the insurer and having perused the record, this Court finds no reason for interfering with the view taken by the tribunal based, *inter alia,* on the decision of the Supreme Court in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297. The driver was proceeded against under the criminal law before juvenile justice board. The plea of the owner (R2W1) consistently has been that she had given the vehicle to R2W2 who, in turn, confirmed her version about he having taken it out on an errand at the instance of the registered owner, the driver i.e. 5th respondent having driven away it unauthorisedly.

4. In above facts and circumstances, the appeal is dismissed.

5. In terms of order dated 7th July, 2011, the insurance company had been directed to deposit the entire awarded amount with upto date interest and by order dated 17.10.2011, Rs. 10,00,000/- was permitted to be released from the said amount. The registry shall now release the balance to the claimants in terms of the impugned judgment.

6. The appeal is disposed of in these terms.

7. The statutory amount shall be refunded.

R.K.GAUBA, J.

OCTOBER 27, 2017
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