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

Decided on: 02nd November, 2017

+ MAC.APP. 456/2008 and CM 39429/2017

THE ORIENTAL INSURANCE CO.LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

PREMO AND OTHERS Respondents
Through: Mr. Jyotindra Kumar, Adv. for R-4

+ MAC.APP. 459/2008 and CM No.39430/2017

THE ORIENTAL INSURANCE CO.LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SANGEETA & ORS Respondents
Through: Mr. Jyotindra Kumar, Adv. for R-6

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. These two appeals are directed against a common judgment passed by the Motor Accident Claims Tribunal on 23.04.2008 (Tribunal) in two accident claim cases, one (suit no.107/2000) instituted by the first respondent in MACA 456/2008 and, the other, (suit no.108/2000) instituted by the first to third respondents in MACA 459/2008, the former seeking compensation for injuries of the said first respondent and the latter seeking compensation on account of

death of Mahesh Pal as a result of motor vehicular accident that statedly took place on 16.07.1999. In each case, Kaptan Singh (the second respondent in MACA 456/2008 and the fourth respondent in MACA 459/2008) was impleaded on the averments that he was the driver of the offending vehicle while Surender Kumar (third respondent in MACA 456/2008 and fifth respondent in MACA 459/2008) was impleaded as the owner of the offending vehicle.

2. The tribunal upheld the claims on the principle of fault liability holding the said driver Kaptan Singh responsible for the accident and, thus, finding him and the said Surender Kumar (the owner) jointly and severally liable to pay the compensation in each case.

3. The appellant / insurance company had also been impleaded as a party respondent on the averments that it had issued an insurance policy covering third party risk in respect of the offending vehicle for the period in question. It was, however, found that the cheque whereby the premium for the said insurance cover had been tendered had been dishonoured on presentation and consequently the insurance policy had been cancelled.

4. The tribunal, while holding that the insurance company was not liable to indemnify, directed it nonetheless to pay the compensation in the first instance to the claimants, they being third parties in respect of such policy and granted recovery rights to it against the driver and the owner. The appeals at hand question the said view taken by the tribunal.

5. It is noted that by virtue of identical orders passed on 14.08.2008 and 18.08.2008 in these two appeals, the insurance

company had been directed to deposit the entire awarded amount with interest in the name of the Registrar General within the period specified, it being a pre-condition to the stay against execution of the awards against the insurance company by the claimants. The appellant indulged in neglect in prompt prosecution of the matters by committing defaults in taking timely steps for service of the respondents. Against this backdrop, by identical orders passed on 13.10.2009 in both these appeals, it was observed that the court was not inclined to grant any further opportunity to the appellant. However, on an undertaking being given, one more opportunity was granted for notices to be served subject to certain conditions attached being complied with.

6. On 26.03.2010, by order passed on the file of MACA 456/2008, it was noted that the claimant (first respondent in the said appeal) was aged 70 years. The learned single judge, then in *seisin* of these matters, noted that the appellant had deposited the entire awarded amount with interest. The Registrar General was directed to release 50% of the said amount to the claimant, the balance having been held back with directions for it to be kept in fixed deposit receipts for a period of one year with cumulative interest.

7. On the same date, i.e. 26.03.2010, by similar order passed on the file of MACA 459/2008, the deposit of the awarded amount by the appellant was taken note of. The learned single judge directed 10% of such deposit to be immediately transferred into the savings bank account of the first respondent in that case and further directed that the balance amount in eight equal instalments be kept in fixed deposit

receipts for various periods. Having regard to the periods for which the fixed deposit receipts were taken out, it is clear that the substantial part of the amount deposited by the insurance company has already been withdrawn by the claimants from such deposits made by the insurance company.

8. By identical orders passed on 06.12.2010 in both these cases, the appeals were admitted and directed to be taken up on their own turn for hearing. When they were taken up for hearing on 16.12.2016, it was submitted on behalf of the appellant that only recovery rights are sought against the above mentioned driver and owner of the offending vehicle. Efforts were made thereafter for service of the said respondents but with no fruitful result. The appellant had sought time on 16.02.2017 to trace out the fresh address of the said respondents for substituted service. On 12.05.2017, there was no appearance on behalf of the appellant.

9. Be that as it may, since substantial amounts from out of the amounts deposited by the appellant in each of these cases has already been released to the claimants and since recovery rights have already been granted, continuation of the proceedings in these appeals would be *akin* to beating a dead horse. Since the rights of the insurance company have been duly protected by the tribunal, it is deemed just and proper that the insurance company presses for such recovery rights by appropriate execution proceedings before the tribunal.

10. In the result, these appeals stand disposed of with directions that balance amounts lying in deposit shall be released to the claimants and

the insurance company will be at liberty to approach the tribunal for enforcement of the recovery rights.

11. The statutory amounts in these appeals shall, however, be refunded.

12. Both the appeals and the pending applications are disposed of in above terms.

NOVEMBER 02, 2017

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R.K.GAUBA, J.

