$~R-599

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th November, 2017

\+ MAC. APPEAL No.995/2012

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

versus

LINU KUMAR & ORS ..... Respondents
Through: Mr. S.N. Parashar, Advocate.

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

JUDGMENT (ORAL)

1. On the accident claim case (Suit No. 732/2010/2008), instituted on 12.03.2008, by the first respondent (the claimant) seeking compensation for injuries suffered by him in a motor vehicular accident that occurred on 12.02.2008, on the averments that he suffered injuries due to negligent driving of Maruti van bearing registration No. DL-3CR-4782 (the van), by the third respondent, liability to pay Rs.1,00,037/- as compensation, was placed at the door of the appellant (insurer), the Tribunal holding it to be the company which had issued the insurance policy, reference in this context being made to a document purporting to be a cover note issued at the instance of the second respondent (registered owner of the van).

2. The insurance company in appeal reiterates that it had never issued any such cover note and, therefore, the finding returned by the Tribunal ignoring the evidence led is unjustified.

3. The second and third respondents, though served, have chosen not to contest the appeal. It is noted that they had chosen to suffer the proceedings before the Tribunal *ex parte*.

4. The insurance company had led evidence by examining K.K. Mittal, Assistant Manager (R1W1), and Ajay Kumar Jain, investigator (R1W2), their testimonies having remained unrebutted and unchallenged. The evidence of the said witnesses clearly brought home the fact that the cover note relied upon by the claimant, and seemingly also by the second and third respondents was a fake document, it having never been issued by or at the instance of the insurance company.

5. In these circumstances, the finding returned by the Tribunal holding the insurance company liable is found to be uncalled for. The said finding is set aside. The direction to the insurance company to pay the compensation is, thus, vacated. The claimant is at liberty to enforce the award against the other respondents.

6. By orders dated 07.09.2012 and 27.11.2013, the insurance company was directed to deposit the entire awarded amount with up to date interest with Registrar General as a pre-condition to stay against execution. The amount deposited along with interest accrued, shall be refunded to the insurance company. The statutory deposit shall also be refunded to the appellant.

7. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 30, 2017//*srb*