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

Decided on: 06th November, 2017

\+ MAC APPEAL 926/2011

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Praveen Sehrawat, Mr. Abhishek Kumar and Mr. Vijay Singh, Advocates

versus

GIAN SINGH & ORS. ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. On 10.08.2004, a motor vehicular accident took place wherein a pedestrian Tirath Ram Arora was hit by a motor vehicle described as truck Swaraj Mazda bearing registration no.HP-64-0325 (the truck) resulting in his death. An accident claim case (case no.1060/2008) was instituted on 01.06.2006 by his sons (third and fourth respondents) seeking compensation under Section 166 of the Motor Vehicles Act, 1988 on the averments that death had occurred due to the accident which had been caused on account of the rash driving of the truck by the second respondent (driver). The truck was registered on the relevant date in the name of the first respondent (registered owner) at whose instance it was insured agaisnt third party risk for the period in question with the appellant (insurer). The said driver, owner and

insurer were impleaded as parties by the first and second respondents (the claimants) before the Motor Accident Claims Tribunal (Tribunal).

2. Upon completion of the inquiry, the tribunal, by its judgment dated 09.08.2011, awarded compensation fastening the liability to pay on the insurer (the appellant). It may be mentioned here that the first and second respondent (i.e. the owner and the driver of the offending vehicle), though served with the notices, had not filed any written statements and, thus, their right to do so was closed by the tribunal by order dated 12.05.2009.

3. The insurer had taken the plea of the breach of terms and conditions of the insurance policy on the ground that the driver (second respondent) was not in a possession of a valid or effective driving licence at the relevant point of time. It led evidence, *inter alia*, by examining Promila Bisht (R3W1), an officer of the company, to prove that it had issued a notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) on 16.07.2010 (Ex. R3W1/1) to the driver with similar notice of the same date (Ex. R3W1/4 and R3W1/3) respectively. The tribunal declined to grant any relief to the insurer observing that mere proof of such notices having been issued or reliance on the record of the police in the corresponding criminal case showing prosecution of the second respondent (driver) for offence under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 on the accusation of he having driven the vehicle without any valid or effective driving licence was not sufficient.

4. The appeal at hand is pressed only to seek recovery rights, the plea of breach of terms and conditions of the insurance policy being reiterated.

5. It is noted that the first and second respondents inspite of service with notices on the appeal have failed to appear. It is also noted that the said respondents had been served by publication before the tribunal and, thereafter, the inquiry was concluded observing that they have failed to appear or file any written statement inspite of the opportunity granted.

6. The learned counsel for the insurance company has been heard and with his assistance the record of the inquiry before the tribunal perused.

7. It is noted that the witness examined by the insurer had also referred to the postal articles (Ex. R3W1/6) and R3W1/5) respectively which had been sent to the first and second respondents in the context of notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC), both such postal articles having returned with the reports that the addressees could not be found at the given addresses. In these circumstances, the insurance company cannot rely on adverse inference being drawn from the fact of there being no response to the notices under Order 12 Rule 8 CPC.

8. The learned counsel for the insurer submits that the first and second respondents cannot escape the liability by avoiding appearance by evading service of notices. He pointed out that the material placed before the tribunal showed prosecution of the second respondent on the charge of he having driven the vehicle without any valid or effective driving licence. He, thus, sought directions to the tribunal for a fresh inquiry into the issue submitting that the absence of any positive proof of a valid driving licence in a fatal accident claim case is far too serious and cannot be given a go-by.

9. In the above facts and circumstances, the prayer of the counsel for the insurer is accepted. The matter is remitted to the tribunal for further inquiry into the plea of recovery rights against the first and second respondents (owner and driver of the offending vehicle). It will be just and proper that the tribunal takes all measures to secure the presence of the said party respondents, if possible, by taking the assistance of the criminal court, or of the police, which would have investigated the crime registered relating to the fatal accident. For such purposes, the insurer shall appear before the tribunal on 06.12.2017. Needless to add, the tribunal will not only give opportunity to the said respondents to file reply but also give opportunity to both sides to lead additional evidence, if any, before taking a fresh decision.

10. By order dated 19.10.2011, the insurance company had been directed to deposit the entire awarded amount with the Registrar General. By order dated 12.12.2012, fifty percent (50%) of such deposited amount was released to the claimants. The Registry shall release the balance to the claimants in terms of the impugned judgment of the tribunal.

11. The statutory amount shall be refunded to the insurer.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 06, 2017

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