

\$~R-423

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th November, 2017

+ MAC.APP. 1057/2011

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. A.K. Soni, Adv.

versus

RAJMANI TRIPATHI & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant (insurer) was fourth respondent before the tribunal in accident claim case (suit no. 609-I/2010) instituted on 14.12.2010 by the first respondent (the claimant), it concededly being the insurer of the vehicle bearing registration DL 09TC 0500 which is described by the insurer as a light motor vehicle (LMV). The fact that the vehicle was insured against third party risk with the appellant was conceded. The tribunal on the basis of inquiry, by judgment dated 27.07.2011, held that the said vehicle was driven negligently, it resulting in injuries being suffered by the claimant. It awarded compensation in favour of the claimant and fastened the liability on the insurer to pay.

2. The appeal was brought by the insurer questioning the liability placed at its door on the ground that by the detailed accident report (DAR) the investigating police officer had informed the Tribunal about documents collected during investigation indicating that the said driver was holding a driving licence for light motor vehicle (non-transport), this not being sufficient authorization in his favour in as much as the vehicle is LMV (commercial). The insurer submits that it could not lead evidence on the issue since it was proceeded *ex-parte*. Along with the appeal application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC) has been moved seeking liberty to adduce additional evidence at the stage of appeal.

3. It is not the case of the appellant that the inquiry was wrongly held *ex-parte* against it. It is not its case that it did not have any notice of the accident claim case. The opportunity for additional evidence under Order XLI Rule 27 CPC cannot be claimed for the asking. In order to make out a good case for such opportunity, the party in question must show that it had exercised due diligence at the stage of the proceedings before the Court at the first instance. There being nothing in the pleadings to support such contention, the prayer under Order XLI Rule 27 CPC does not deserve to be granted. The application to such effect is, therefore, dismissed.

4. Even if the permission to lead addition evidence were to be granted, it would make no difference. Similar contentions have been repelled by this Court in a series of cases including MAC Appeal no. 32/2006 *The New India Assurance Co. Ltd. vs. Arvinder Kaur & Ors.* decided on 17.02.2016 and MAC Appeal no. 154/2013 titled *Iffco*

Tokio General Insurance Co Ltd vs. Darshna And Ors. decided on 16.08.2017, with reference to ruling of the Supreme Court in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297.

5. The appeal is, therefore, found wholly devoid of substance and is dismissed.

6. The insurance company had deposited the entire awarded amount in terms of the order dated 28.11.2010. The said amount shall be released to the claimant.

7. The statutory amount deposited by the insurance company shall be made over by the Registry as costs to the Delhi High Court Legal Services Committee.

NOVEMBER 07, 2017
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R.K.GAUBA, J.