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

Decided on: 28th July, 2017

+ CM(M) 381/2017

ORIENTAL INSURANCE CO LTD Petitioner
Through: Mr. R.K. Tripathi, Adv.

versus

HARI BAHADUR & ORS Respondents
Through: Mr. Upendera Bahadur, Adv.
for R-2 & 3.

+ MAC.APP. 340/2017

ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. R.K. Tripathi, Adv.

versus

HARI BAHADUR & ORS Respondent
Through: Mr. Upendera Bahadur, Adv.
for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On the accident claim case (MACT No. 451138/16, old no. 261/15) of the first respondent in (MAC Appeal No. 340/2017), the tribunal, after inquiry, by judgment dated 19.01.2017, upheld the case that she had suffered injuries in motor vehicular accident that had occurred at 8.45 p.m. on 04.10.2011 at C-Block Main Gate, Saraswati

Vihar, Delhi, involving negligent driving of three wheelor scooter bearing registration no. DL 1RJ 0063 (TSR) by the second respondent in the said appeal, vehicle being registered in the name of the third respondent in the said appeal, it being insured against third party risk with the appellant insurance company (insurer). The insurer, in the course of contest, had raised the plea of breach of terms and conditions of the policy on the ground that the permit in respect of the TSR was subject to the condition that the vehicle would be driven by the permit holder only i.e. the third respondent in the appeal. The evidence, on the other hand, showed that the TSR had been given by the permit holder (the third respondent) to his son (the second respondent) for driving. It may be added here that it was otherwise proved by evidence to the satisfaction of the tribunal that the driver (the second respondent in the appeal) did hold a valid driving licence inclusive for TSR.

2. The tribunal awarded compensation in favour of the first respondent in these two matters and directed the insurance company to pay rejecting the defence taken by the insurer.

3. It appears that there was delay on the part of the insurance company in depositing the awarded compensation and in the proceedings that had continued for ensuring enforcement (miscellaneous DJ 59/2017), a contention was raised before the tribunal on 05.04.2017 that the insurance company intended to file appeal and that had occasioned the delay in compliance. The tribunal was not satisfied with the said explanation and, by order dated 05.04.2017, directed salary of the Branch Manager of the insurance

company to the extent of one month to be attached and brought to the tribunal.

4. By MAC Appeal No. 340/2017, the insurance company reiterates its plea of breach of terms and conditions of policy and, by the other petition CM (M) 381/2017, it prays for the direction of attachment of the salary of Branch Manager in terms of order dated 05.04.2017 to be set aside submitting that the default was inadvertent and not intentional.

5. The appeal of the insurance company is found devoid of substance. It is noted from the observations of the tribunal in (para 8 of) the impugned judgment that the terms and conditions restricting the use of the TSR in the hand of the permit holder were not included in the formal permit document that was issued. The claim that the said terms and conditions were verbally explained cannot be accepted. There is, thus, no willful breach of such terms. The appeal (MAC Appeal No. 340/2017), therefore, is dismissed.

6. The insurance company had been directed to deposit the awarded amount with interest with the tribunal in terms of order dated 11.04.2017. The amount shall now be released to the claimant.

7. The other petition, CM (M) 381/2017, is allowed since there is nothing on record to show any intentional delay. It must, however, be added that intention to file appeal within 30 days by itself should not have resulted in default in compliance inasmuch as, in terms of the law contained in Section 168 (3), it was the obligation of the insurance company to pay the compensation within 30 days of the announcement of the award by the tribunal. In absence of any material

showing intentional delay by the Branch Manager, the direction for attachment of his salary is set aside.

8. The petition is disposed of with these observations.

9. Statutory amount deposited in MAC Appeal No. 340/2017 shall be refunded.

R.K.GAUBA, J.

JULY 28, 2017

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