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

*Decided on: 04<sup>th</sup> August, 2017*

+ **FAO 105/2015 and CM 6481/2015 and 6494/2015**

**NARESH BHARDWAJ** ..... Appellant  
Through: **Mr. Shashank Sharma, Adv.**

**Versus**

**ORIENTAL INSURANCE COMPANY LTD.**  
**AND ORS.** ..... Respondents  
Through: **Mr. A.K. Soni, Adv. for R-1**

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

**JUDGMENT (ORAL)**

1. The appellant was impleaded as second respondent in the accident claim case (claim petition 244/1999, new no.541/2003) which was instituted on 16.02.1999 by third to eight respondents (collectively, the claimants), seeking compensation on account of death of Tarsem Singh in a motor vehicular accident that occurred statedly due to the negligent driving of a truck bearing registration no.UP-14G-0704 (the truck), the appellant being admittedly its registered owner, it concededly being insured against third party risk for the period in question with the first respondent (insurer).

2. It is admitted that the appellant was duly served with the notice on the said claim case he having engaged a counsel and having submitted a written statement to put in contest. After filing of the written statement, however, he suffered the proceedings *ex-parte*.

3. The inquiry held by the Tribunal resulted in the judgment dated 02.05.2005 whereby the claim for compensation on the principle of fault liability was upheld and compensation in the sum of Rs.4,80,000/- was awarded.

4. The insurer had taken the plea of breach of the terms and conditions of the insurance policy on the ground that the second respondent, he admittedly being the driver of the offending truck at the time of the accident, was not holding a valid or effective driving licence. This plea was accepted on the basis of evidence led by the insurer there being no contest thereto on behalf of the appellant. Against this backdrop, while the insurer was directed to satisfy the award, recovery rights were granted to the insurer against the appellant.

5. The appellant moved this Court by MACA 95/2006 challenging the said decision but sought permission to withdraw the same seeking liberty to move the Tribunal by way of an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC). This Court by order dated 17.10.2006 dismissed the said appeal as withdrawn.

6. The appellant, thereafter, moved the Tribunal by application under Order IX Rule 13 CPC, with application under Section 5 of the

Limitation Act besides objection petition against enforcement. His application under Order IX Rule 13 CPC was registered as M-48/2007 and was considered by the Tribunal but dismissed by a detailed reasoned order dated 03.11.2007. It is the said order which is challenged by the appeal at hand submitted in April 2015.

7. The appeal was accompanied by two applications having a bearing on the question of delay. One of them, CM 6482/2015, sought condonation of delay of 138 days in re-filing. The said application was allowed by order dated 13.04.2015.

8. The other application, CM 6481/2015 relates to delay in filing the appeal, it being a delay of 2394 days. The only explanation tendered in the said application seeking condonation of delay is that Mr. R.S. Malha, advocate who had been engaged for the purpose had not communicated the order dated 03.11.2007 or its implications. This explanation is frivolous on its face and does not deserve to be accepted. The appellant has not served the counsel with any notice seeking explanation. He has not filed any complaint against the advocate with the Bar Council for such inordinate delay, if it was attributable to the counsel. It is inconceivable that a person who was well aware that an *ex parte* order had been passed against him, adverse to his interest, giving rights to recover the compensation in favour of the insurance company would not exercise due diligence and would simply wait for the counsel to come up and inform him about the result of the proceedings taken out by application under Order IX Rule

13 CPC, that too after it had been revealed in the course of appeal before the High Court that such was the appropriate remedy.

9. The application for condonation of delay is dismissed. In the result, the appeal cannot be entertained. The appeal with application of stay stand disposed of with these observations.

**R.K.GAUBA, J.**

**AUGUST 04, 2017**

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