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

Decided on: 08th November, 2017

\+ MAC.APP. 1165/2011 and CM 23415/2011 and 5670/2016

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Galib Kabir, Advocate

versus

DEEPAK & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-4

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

JUDGMENT (ORAL)

1. The motor vehicle described as Tata Sumo bearing registration no.DL-2CH-3419 (offending vehicle) was admittedly insured against third party risk with the appellant / insurance company (insurer) for the period in question, the said vehicle said to have been driven by the third respondent (Sandeep) having come to be involved in an accident on 28.01.2008 resulting in the death of Gaurav, a child, aged 11 years. The first and second respondents (collectively, the claimants) being the parents of the deceased child instituted accident claim case (petition no.175/2010) on 01.03.2008 seeking compensation on the allegations that the accident had occurred due to negligent driving of the said vehicle by the third respondent. Gopi Chand, fourth respondent in this appeal, son of Sunder Ram who has since died and substituted by his legal representatives (fourth to sixth respondents)

was impleaded in the claim case as second respondent before the tribunal on the averments that he was the owner of the offending vehicle.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 27.09.2011, returned a finding that the death had occurred in the accident due to the negligent driving of the said vehicle by the third respondent thereby holding him and the owner of the vehicle jointly and severally liable. The insurer had raised the plea that it could not be called upon to indemnify since the vehicle was meant to be used as a private car but had been given on hire, such use not being covered by the insurance policy. This plea was accepted by the tribunal. It, however, called upon the insurer to pay the compensation and, thereafter, recover it from the driver or the registered owner of the vehicle.

3. The present appeal was filed by the insurer contending that in the given facts and circumstances, the liability could not have been fastened upon it and, rather than being called upon to pay and then recover, it should have been exonerated. Reliance is placed on *Oriental Insurance Company Ltd. Vs. Sudhakaran K.V. and Ors., (2008) 7 SCC 428.*

4. In the considered view of this court, the approach of the tribunal in the given facts and circumstances was correct. The third party interest cannot be allowed to be defeated. The interest of the insurer having been protected, its plea for total exoneration cannot be accepted. The appeal is dismissed.

5. An application (CM 5670/2016) was moved during the pendency of this appeal by the legal representatives of the deceased fourth respondent contending that their father was wrongly impleaded in the inquiry before the tribunal as his parentage is different. It is noted that Gopi Chand, second respondent before the tribunal inspite of being served, did not appear before the tribunal. In these circumstances, the plea now raised by his legal representatives cannot be accepted. The application is dismissed.

6. By order dated 22.12.2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General. By subsequent order dated 13.04.2015, fifty percent (50%) was permitted to be released to the claimants. The balance shall now be released to the claimants in terms of the impugned judgment.

7. The statutory amount is forfeited as costs in favour of Delhi High Court Legal Services Committee.

8. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 08, 2017
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