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

Decided on: 7th September, 2017

+ **MAC APPEAL No. 922/2014**

THE ORIENTAL INS. CO. LTD. Appellant
Through: , Adv.

versus

RINA DEVI & ORS. Respondents
Through: Adv.

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

JUDGMENT (ORAL)

1. The motor vehicular accident that occurred on 19.03.2008 in the area of police station Najafgarh, Delhi, involved negligent driving of truck bearing registration no. HR-63A-2688 by the third respondent, it being registered in the name of fourth respondent at whose instance the appellant insurance company had issued insurance policy covering third party risk for the period in question, the accident resulting in death of Subhash, husband of the first respondent and son of the second respondent (collectively, the claimants). Accident claim case (MACT no. 771A/2008) was instituted by the claimants on 08.05.2008, impleading the appellant, third and fourth respondents as parties. After inquiry, the tribunal by judgment dated 13.08.2014, awarded compensation fastening the liability on the appellant rejecting its plea of breach of terms and conditions of the insurance policy

which had been raised against the backdrop of submission that the vehicle in question was not covered by a valid permit for Delhi where the accident had taken place.

2. The appeal at hand was filed by the insurance company raising various contentions including computation of the compensation. By order dated 14.10.2014, while entertaining the appeal limited to the issue of recovery rights against the fourth respondent (the registered owner of the vehicle), all other contentions of the insurer were rejected. In this view, this judgment will be read as one passed in continuation of the order dated 14.10.2014.

3. The fourth respondent in spite of service has failed to appear. It is noted that he had suffered the proceedings before the tribunal *ex-parte*.

4. There is merit in the contention of the insurance company about the breach of terms and conditions of the insurance policy. It had led evidence before the tribunal by examining V.D. Talwar (R3W1) its administration officer, *inter alia*, to prove notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) having been issued to the driver and owner of the offending vehicle calling them upon to produce the relevant document including the permit. The witness proved that notices were sent, *inter alia*, to the fourth respondent and that there was no response thereto. The tribunal, however, short-shrifted the said submission by observing that the insurer should have been examined the advocate under whose signature the notice has been sent. This cannot be accepted. There is formal proof of notice having been issued and sent to the respondents at their addresses. The

presumption of service coupled with proof of there being no response to the insurance company at whose instance the notices had been sent and the fact that the fourth respondent, particularly, shied away from participation in the inquiry or even at the stage of appeal, leads to adverse inference and leaves no room for doubt that the vehicle was not covered by any valid permit.

5. Thus, the contention of the insurance company is accepted. It is granted recovery rights against the fourth company *i.e.* the registered owner of the vehicle. For enforcement of such recovery rights, it may take out appropriate proceedings before the tribunal.

6. The appeal is disposed of in above terms.

7. The statutory deposit shall be refunded.

SEPTEMBER 07, 2017

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R.K.GAUBA, J.

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