$~R-703

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

Decided on: 12th December, 2017

\+ MAC APPEAL 1303/2012

THE ORIENTAL INSURANCE COMPANY LTD. ...Appellant
Through: Mr. A.K. Soni, Advocate

versus

RAM SARAN & ORS. ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. In the course of inquiry into the accident claim case (MACT no.124/06), instituted by the first respondent (claimant) on 03.06.2006, seeking compensation for the injuries suffered by him in a motor vehicular accident that took place on 06.11.2002, due to the negligent driving of a motor vehicle described as Tata Tempo bearing registration no.DL-1LE-0760, the appellant admittedly being the insurer of the said vehicle, had taken the defence that there was a breach of the terms and conditions of the insurance policy, as second respondent (driver of the offending vehicle) was not holding a valid or effective driving licence. The tribunal framed issues on 04.08.2007, the second of the issues thus framed being specifically in respect of the said plea raised by the insurer in its defence. The tribunal decided the claim case, by judgment dated 15.09.2012, and granted

compensation in the sum of Rs.7,67,997/-, in favour of the claimant and directed the insurer (appellant) to pay with interest at the rate of 9% p.a. It, however, failed to return a finding on the issue concerning the plea of the insurer in defence. It is this omission which is raised as the solitary bone of contention at the hearing on the appeal at hand by the insurer.

2. The plea must be accepted. It was improper on the part of the tribunal not to have considered the plea in defence, particularly when it was subject matter of the issue framed. The tribunal was expected to peruse the material before it and then decide the issue either way. The judgment of the tribunal, in this view of the matter and to such an extent is perverse and is consequently set aside accordingly.

3. Thus, while not disturbing the grant of compensation to the first respondent (claimant) or the direction to the insurer to pay the said amount to him, the issue of breach of terms and conditions of the insurance policy raised in defence by the insurer is remitted to the tribunal for proper adjudication. For such purposes, the insurer and the parties, other than the claimant, are directed to appear before the tribunal on 13.02.2018. If so required, the insurer would have the liberty to lead additional evidence before deciding the issue. The tribunal will offer similar opportunity to the parties that contest. It is hoped that the tribunal will render its decision on this limited issue at an early date.

4. By order dated 03.01.2013, the insurer had been directed to deposit 80% of the awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch. By order dated 07.08.2013, fifty

percent (50%) of the deposited amount with proportionate interest was permitted to be released to the claimant. The balance lying in deposit with accrued interest shall also now be released to the claimant. The insurer is directed to satisfy the award in entirety in favour of the claimant by making the requisite deposit with the tribunal within 30 days making it available to be released to the claimant, subject, of course, to decision on its plea for recovery rights.

5. The statutory amount shall be refunded to the insurance company after proof is shown of the award having been satisfied.

6. The appeal is disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 12, 2017
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