$~R-153 & R-156

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

Decided on: 31st August, 2017

\+ MAC APPEAL No. 4/2010

ORIENTAL INS. CO. LTD. . ..... Appellants
Through: Mr. Pradeep Gaur, Adv.

versus

MASTER SHANU & ORS. ..... Respondents
Through: Mr. Navneet Goyal, Adv. for R-1.

\+ MAC APPEAL No. 14/2010

ORIENTAL INS. CO. LTD. . ..... Appellants
Through: Mr. Pradeep Gaur, Adv.

versus

SHAHNAZ & ORS. ..... Respondents
Through: Mr. Navneet Goyal, Adv. for R-1 & 2.

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

JUDGMENT (ORAL)

1. On 04.01.2007, a motor vehicular accident occurred, statedly involving negligent driving of motor vehicle described as Gas tanker bearing registration no. HR 38A 6615 (the offending vehicle) by Rajesh Giri, a respondent in both these appeals. It resulted in injuries being suffered by two persons they being Shanu and Atif Miyan, the

latter dying in the consequence. Two accident claim cases were instituted one for and on behalf of Shanu (first respondent in MAC Appeal no. 4/2010) and, the other, for and on behalf of the parents of the deceased Atif Miyan, they being first and second respondents (collectively, the claimants in MAC Appeal No. 14/2010). In both cases, the claimants had impleaded besides the driver of the offending vehicle, Baldev Singh, he being owner of the said vehicle, this in addition to Oriental Insurance Company Ltd. (appellant in both these matters), it concededly having issued insurance policy covering third party risk in respect of the said vehicle.

2. The Tribunal held inquiry after clubbing both the cases and, by judgment dated 08.10.2009, upheld the case in each case for compensation to be awarded on the principal of fault liability. The compensation determined separately in the two cases was awarded and the liability was fastened on the appellant to pay the same with interest @ nine per cent (9%) per annum, from the date of filing of the petition till realization.

3. While the driver and owner of the offending vehicle had chosen to suffer the proceedings *ex-parte,* the insurer had contested, *inter alia,* by raising the plea of breach of terms and conditions of the insurance policy and adducing evidence in such regard by examining Pushpa Khub Chandani (R3W1). The tribunal, however, declined to accept the defence plea which was primarily concerning the validity of the driving licence of the driver of the offending vehicle, thus, fastening the liability on the insurer.

4. The appeals by the insurer are pressed only on two grounds, one concerning the rate of interest, the submission being that it is excessive and, the other, that the offending vehicle in question being a gas tanker, one meant for carrying hazardous goods, the liability could not have been fastened on the insurance company without the driver or owner of the vehicle adducing proof that the driver did hold a valid driving licence for a vehicle of such nature.

5. The driver and owner of the offending vehicle were duly served with notices on both these appeals and had even earlier appeared through counsel. At the hearing, however, there is no appearance on their behalf.

6. The contention of the insurance company (appellant) about the rate of interest must be rejected since the tribunal has taken a view which is in accord with the consistent view taken by this court on the said subject [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

7. It is observed that though the tribunal had noted the contention of the insurance company and also the effect and import of the evidence led by it on the question of driving licence, it failed to render any judgment on that subject. The impugned judgment is conspicuously silent on the issue. This is not proper and cannot be accepted.

8. While the insurance company is held liable to satisfy the third party claim, the issue concerning its prayer for recovery rights is remitted to the tribunal for proper adjudication. The insurer, the driver

and owner of the offending vehicle are directed to appear before the tribunal for further proceedings in above light on 11th October, 2017.

9. By interim orders, the insurance company had been directed to deposit the awarded amount with UCO Bank, Delhi High Court, such deposits having already been released. If there is any deficiency, the insurance company would be liable to make the same good, by requisite deposit with the tribunal within thirty days in favour of the claimants.

10. The statutory deposits in both the appeals shall be refunded.

11. The appeals stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 31, 2017
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