

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

Date of Decision: March 07, 2017

+ **FAO 475/2016**

TATA AIG GENERAL INSURANCE CO LTD Appellant

Through: **Ms. Vandana Khalon and Mr.
Rudra Kahlon, Advocates**

Versus

TODI LAL & ANR.

..... Respondents

Through: **Mr. S.N. Parashar, Advocate for R-
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**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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Received on transfer.

C.M.No. 35516/2016 (Exemption)

Allowed subject to all just exceptions.

C.M. 35517/2016 (delay)

There is delay of 62 days in filing the accompanying appeal.

Notice to respondent No.2 is dispensed with as learned counsel for appellant submits that no relief is claimed against him in this appeal against respondent No.2.

Upon hearing, I find that averments made in paragraph No.2 of the

instant application provide sufficient cause to condone the delay occasioned. The application is allowed and the delay stands condoned.

The application is disposed of.

FAO 475/2016 & C.M. No.35515/2016 (for stay)

As per order of 2nd December, 2016, service is complete.

Impugned order of 1st June, 2016 rejects appellant's application for re-opening of evidence on the ground of settlement between the Injured and driver of vehicle No. DL3CBR2262 being fraudulent. Learned Tribunal vide impugned order 1st June, 2016 has rejected appellant's aforesaid application by observing that the new facts brought out by appellant are not reflected in the application nor in the reply filed and that on two earlier occasions, appellant's similar application had been dismissed and that by allowing this application, it would amount to review of earlier orders, vide which similar applications were dismissed.

Challenge to impugned order by learned counsel for appellant is on the ground that appellant's first application for re-opening of evidence was regarding the controversy about the vehicle number and its color and the said application has been dismissed by learned Tribunal by observing that Injured had arrived at a settlement with Kapil Bhati-registered owner of vehicle No. DL3CBR2262. It is pointed out by appellant's counsel that by the second application, review of order of 30th November, 2015 was sought and said application had been dismissed vide order of 13th January, 2016 while holding that there is no ground to review. Learned counsel for appellant submits that recalling of Injured to confront himself with the fraudulent settlement between him and registered owner of

vehicle No. DL3CBR2262 is essential, as according to Injured, the color of offending vehicle was white whereas the color of vehicle No. DL3CBR2262, which is insured with appellant-Insurer, is blushing red. It is further submitted that in this context, recording of evidence of Investigating Officer and Kapil Bhati, who is the registered owner of insured vehicle number DL3CBR2262, is essential. It is pointed out by learned counsel for appellant that vehicle number DL3C2268 of which reference is there in the FIR, is of white color and the Insurer of the said car is ICICI Lombard Insurance Company. Thus, it is submitted that impugned order deserves to be set aside and appellant's application deserves to be allowed.

Learned counsel for respondent-Injured supports the impugned order and submits that at the fag end of trial, evidence is not to be re-opened, as there is no basis to infer that the settlement between registered owner of DL3CBR2262 with the Injured was fraudulent and so, this appeal ought to be dismissed.

Upon hearing and perusal of impugned order and the material on record, I find that registration number DL-3C-2268 is not in existence and vehicle number DL3CBR2262 of which incomplete reference is there in FIR is of red color, whereas the stand of Injured from the beginning is that the vehicle involved in this accident is of white color.

During the course of hearing, this Court was apprised of the fact that Injured is an illiterate villager and so in such a situation, there can be confusion of vehicle number. However, the factum of so called settlement between the registered owner of vehicle DL3CBR2262 and Injured is

intriguing and to find out the truth, scope of enquiry needs to be enlarged. The appellant has been negligent in exploring this crucial aspect to bring out the truth but on this technicality, appellant cannot be precluded from getting registered owner of vehicle DL3CBR2262 examined in evidence on the crucial aspect of settlement between the registered owner of the vehicle and the Injured.

In the first instance, it is deemed appropriate to allow appellant to get registered owner of vehicle No. DL3CBR2262, of which appellant is the Insurer, examined in evidence qua purported settlement. The impugned order is accordingly set aside and appellant is permitted to summon the aforesaid witnesses- *Kapil Bhati* within a week. Subject to what emerges in the examination of Kapil Bhati-registered owner of vehicle DL3CBR2262, appropriate orders be obtained from learned Tribunal regarding summoning/ recall of Injured and Investigating Officer of FIR in question. Since the case is at the stage of final arguments, therefore, learned Tribunal shall make all the endeavors to complete recording of fresh evidence, preferably within three months from the date already fixed.

With aforesaid directions, this appeal is disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

March 07, 2017

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