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

Decided on: 28th August, 2017

\+ MAC APPEAL No.926/2016 & CM No. 41340/2016

HDFC ERGO GEN. IN. CO. LTD. ..... Appellant
Through: Mr. A.K. Soni, Adv.

versus

ASHOK KUMAR & ORS. ..... Respondents
Through: Mr. Satendra Sharma, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The first respondent had instituted accident claim case (suit no. 139/14) on 12.02.2013, seeking compensation on account of injuries suffered in motor vehicular accident that occurred on 04.04.2012 at about 11.12 a.m., it statedly involving collision between two vehicles, one a motorcycle on which the claimant was riding and the other a three wheeler scooter bearing registration no. DL 1RL 6639 (TSR), which was admittedly insured against third party risk with the appellant insurance company (insurer).

2. The tribunal, after inquiry, by judgment dated 02.07.2016, upheld the claim for compensation on the basis of finding returned

that the accident had occurred due to negligent driving of the TSR and proceeded to award compensation determined in the sum of Rs. 1,49,000/-, fastening the liability on the appellant.

3. By the appeal at hand, the insurer questions the finding about the involvement of the TSR or negligence on the part of the driver (the second respondent), arguing that there was no actionable evidence produced. The plea is not correct. The claimant had examined himself as PW-1 on the strength of his affidavit (Ex.PW-1/A) on which he was cross-examined. The second respondent (driver of the TSR) had also appeared as witness (R1W1) denying the collision taking the stand that the motorcycle of the claimant had hit against the stationary tempo.

4. The tribunal did not believe the respondent (R1W1). The evidence of the claimant appearing as PW-1, in the view of this Court, has been correctly accepted as the material on record clearly showed that even the TSR had turned turtle and its driver had also received injuries corroborating the word of the claimant about the collision. In cases under the tort liability, the test is not that of strict proof of culpability beyond doubt as that in criminal jurisprudence. On the touch stone of preponderance of probabilities, the view taken by the tribunal cannot be faulted.

5. The appeal is devoid of substance and is dismissed.

6. The insurance company has deposited the awarded amount with UCO Bank, Delhi High Court branch in terms of directions in the order dated 07.11.2016. The amount lying in deposit shall now be released to the claimant.

7. The statutory deposit shall be refunded after proof of satisfaction of the award has been produced.

R.K.GAUBA, J.

AUGUST 28, 2017
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