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

Decided on: 22nd September, 2017

\+ MAC.APP. 860/2017 and CM APPL.34980-34982/2017

SANJEEV KUMAR SHARMA ..... Appellant
Through: Mr. Mohit Sharma, Advocate with Mr. Amit Baipoya, Advocate

versus

ORIENTAL INSURANCE CO LTD & ORS..... Respondents
Through: Mr. Pradeep Gaur, Advocate with Mr. Amit Gaur, Advocate

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

<u>JUDGMENT (ORAL)</u>

1. A very peculiar situation has been brought about by the appeal at hand, requiring consideration in light of not only the judgment dated 11.09.2012, on accident claim case (Suit No.137/2010) which is impugned here, but also the subsequent order dated 08.04.2016 passed by the same very tribunal in Execution Case No.17/2015, such proceedings having been initiated by the first respondent (insurer). A copy of the said subsequent order dated 08.04.2016 was placed before the court during the hearing and has been taken on record.

2. The accident claim case was instituted by the second respondent (the claimant) seeking compensation for the injuries suffered by him. It appears that the appellant, admittedly the registered owner of the

bus bearing registration No.DL-1PA-5408 (the offending vehicle), though served by notice in the said proceedings, after filing written statement failed to appear to assist and, thus, virtually suffered the proceedings *ex-parte.*

3. During the inquiry, the insurer pressed its plea of breach of terms and conditions of the insurance policy on the ground, that the driver of the bus was not holding a valid or effective driving licence. This plea was accepted by the tribunal and while the insurer was directed to initially bear the burden of payment of the compensation, it was granted recovery rights against the appellant. The judgment was passed on 11.09.2012. Since the appeal against the said judgment is delayed, admittedly by 1667 days (as calculated by the appellant), it is accompanied by application for condonation, seeking to attribute neglect on the part of the previous advocates.

4. While the issue of neglect by the previous advocates may require consideration at some appropriate stage, at the hearing on the present appeal, the counsel for the appellant submitted that he had moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) praying for the *ex-parte* judgment dated 11.09.2012 to be set aside. The said application appears to have been considered by the tribunal in the course of the execution proceedings taken out by the insurer. The fourth paragraph of the order dated 08.04.2016 passed thereupon needs to be extracted verbatim as under:-

> *"4. In the present case as per the own submissions of the applicant he was duly served but because of his own negligence/casual approach, he did not pursue his matter. I am not satisfied with the grounds taken by the JD for not*

> *appearing in the Court after his service. In these circumstances, I am of the opinion that the ends of justice would meet if, the applicant is granted an opportunity to contest the case and he be given an opportunity to cross-examine the PWs and RWs provided he deposits 50% of the amount paid by the insurance company to the injured i.e. Rs.13,68,466/- (50% of Rs.27,36,932/-) within one month by way of FDR in the name of District & Sessions Judge (South).”*

5. It has been submitted that the appellant has complied with the aforementioned directions by deposit of 50% of the amount paid by the insurance company to the claimant in the form of fixed deposit receipt along with security duly furnished.

6. It is incomprehensible as to what impelled the tribunal to pass conditional order giving liberty to the appellant to avail of renewed opportunity to cross-examine the witnesses even of the claimant if it was not satisfied with the grounds taken. If compliance has been made with the afore-quoted directions, the natural consequence would be that the inquiry into the claim petition itself would stand revived. It is not clear from the aforementioned order dated 08.04.2016 as to whether notice of the application under Order IX Rule 13 CPC was given by the tribunal to the claimant before passing such order. The counsel for the appellant, however, appears to have understood the afore-quoted order to mean that only the inquiry into the plea of the insurer as to the breach of terms and conditions of the insurance policy had been thereby revived but, if that were to be the position, there was no occasion for the tribunal to observe that the appellant herein *“would be given an opportunity to cross-examine the PWs and RWs”*.

7. The order dated 08.04.2016 has created a lot of confusion and would need clarity.

8. In above fact-situation, the counsel for the appellant now submits that he may be allowed to withdraw the present appeal and the applications filed therewith with liberty to approach the tribunal for clarification or review of the order dated 08.04.2016.

9. The appeal and accompanying applications are dismissed as withdrawn with liberty as prayed granted, reserving all the contentions of the appellant.

10. Dasti.

R.K.GAUBA, J.

SEPTEMBER 22, 2017
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HIGH COURT OF DELHI
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