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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th November, 2017

+ MAC.APP. 1018/2016

GAUTAM PATPATIA & ANR

..... Appellants

Through: Mr. Sunil Bhatt, Advocate.

versus

AMITA RANI

..... Respondent

Through: Mr. Dinesh Malik, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On the accident claim petition (Suit No. 209/14) instituted by the respondent on 09.09.2014, the liability to pay compensation has been fastened against the appellants by the Tribunal, by judgment dated 27.11.2015, returning a finding that the respondent had suffered injuries in a motor vehicular accident that had occurred on 14.02.2014 at about 1 PM near Gannaur Bridge within the area of District Panipat wherein two cars had collided against each other; one being Car No. DL-5CC-7621 (the car of the claimant) and, the other being, Car No. DL-3C-BV-9535 (the car of the second appellant), it admittedly being driven by the first appellant. It may be added here that the liability has come to be placed at the door of the appellants because there was no insurance policy taken out to cover the third party risk.

2. The prime grievance of the appellants is that they were denied right to defend. This plea is found to be correct as the record of the Tribunal so demonstrates by proceedings recorded on 18.02.2015.
3. The claim petition had been filed on 09.09.2014 and notice was issued to the respondent for 16.12.2014. On 16.12.2014, the appellants appeared, through counsel, but on the submissions of the parties they were referred to mediation for 12.01.2015. There are no proceedings of 12.01.2015.
4. The communication dated 10.02.2015 from the Branch In-charge, Mediation Centre, indicates the case could not be settled and thus, the matter was returned to the Tribunal. This communication reflects the next date of hearing as 17.02.2015.
5. The Court Master confirms that 17.02.2015 was a Court holiday on account of *Shivratri* and, thus, the matter was taken up by the Tribunal on 18.02.2015. The Tribunal noted that the matter had returned unsettled and immediately thereafter proceeded to strike off the defence on the ground “*no written statement had been filed*”.
6. In the entire record of previous proceedings there was no direction for any written statement to be filed. It may be that by issuing notice, the Tribunal had expected the written statement to be filed. But then it had to be borne in mind that it had not insisted on filing of written statement and had instead chosen to refer the parties to mediation, a course opted by them. Against this backdrop, one more opportunity, at least, for written statement to be filed was called for. The striking off the defence at such initial stages has led to denial of effective opportunity to the appellants to contest.

7. For the foregoing reasons, the impugned judgment is set aside. The claim case is remanded to the Tribunal for further proceedings in accordance with law. The parties shall appear before the Tribunal on 20.12.2017. Since the appellants seek to contest, they are directed to file their written statement before the Tribunal on the date of first appearance fixed as above. There shall be no further opportunity granted. In case of default, the Tribunal will have the liberty to proceed further in accordance with law.

8. By order dated 02.12.2016, the appellants had been directed to deposit 50% of the awarded amount with the Tribunal within four weeks, as a pre-condition to stay against the execution of the award which was impugned by the present appeal. Learned counsel for the appellants submits that compliance has been made with such directions. Since the car in question was not insured against third party risk, it is directed the amount thus deposited with the Tribunal shall be retained in a fixed deposit interest bearing account and appropriately availed by the Tribunal either for the satisfaction of the award or for refund, as the case may be, in light of the fresh adjudication.

R.K.GAUBA, J.

NOVEMBER 20, 2017

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