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

Decided on: 2nd November, 2017

+ MAC.APP. 1021/2016 & CM No. 44782/16

CHOLAMANDALAM MS GENERAL INSURANCE

COMPANY LTD

..... Appellant

Through: Mr. Pankaj Gupta along with Ms.
Suman Bagga, Advs.

versus

MASTER TEHSEEM @ AHSEN & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent had instituted accident claim case (MACA.No. 223/2013) on 09.09.2013 seeking compensation on the grounds that while travelling in jeep bearing registration no. HR-39B-3692 (in Delhi) on 08.08.2013, it being driven by the second respondent in a negligent manner, he had suffered injuries since the said driver had lost control over the vehicle and hit the side wall of the flyover. The jeep is shown by the evidence on record to have been registered in the name of the third respondent and insured against third party risk for the period in question with the appellant (insurer). The said driver, owner and the insurer were impleaded as party respondents before the tribunal. The driver and owner, by their joint

written statement, resisted the claim denying that any such accident had occurred. The insurer by its written statement took the defence that the claimant was an unauthorized gratuitous passenger. During the course of inquiry, however, the insurer also took the plea that it could not be called upon to indemnify since the jeep was registered as a private car, it having the capacity of ten persons including the driver, while, the evidence would show that, it was used for commercial purposes carrying 15-16 passengers beyond the authorized capacity.

2. The tribunal, by judgment dated 12.08.2016, accepted the claim of the first respondent about accident having occurred due to negligent driving by the second respondent (the driver), it having resulted in injuries being suffered by him. The tribunal awarded compensation in the total sum of Rs.21,85,175/- directed the insurer to pay the compensation with interest at the rate of 12% per annum. The plea of the insurer about breach of terms and conditions of the insurance policy, however, was rejected primarily on the ground that the insurer had not led any evidence with regard to the registration of the vehicle as a private vehicle.

3. The insurer has come up with the appeal questioning the levy of interest at 12% per annum and also seeking recovery rights to be granted against the owner of the vehicle (the third respondent).

4. On 23.08.2017, this Court heard the appeal and passed the following order as under:-

“The learned counsel for the insurance company submits that insofar as the impugned judgment granting compensation in favour of first respondent is concerned, the only grievance is in respect of the levy

of interest @ 12 % per annum, it being excessive. The learned counsel for the claimant (first respondent) fairly concedes that no special reasons have been set out by the tribunal in the impugned judgment to levy such rate of interest.

Following the consistent view taken by this court in [see Oriental Insurance Co Ltd v. Sangeeta Devi & Ors., MAC.APP. 165/2011, decided on 22.02.2016], the rate of interest is reduced to 9% per annum. The award to the extent it granted compensation in favour of first respondent stands modified accordingly.

The insurance company has deposited the awarded amount with interest @ 9% per annum in terms of order dated 02.12.2016. Rs. 3 lakhs was released to the first respondent from such deposit by order dated 01.05.2017. The balance shall now be released to the first respondent (claimant) in terms of the impugned judgment.

The appeal, thus, is to be considered further restricted to the claim of the insurance company for recovery rights against second and third respondents, this on the grounds that the evidence, particularly of PW-2 (claimant), shows that the vehicle in question was being used for commercial purposes, even the claimant having deposed having taken it on hire against charges paid, the vehicle carrying 15-16 passengers, in breach of the terms of the insurance policy which was issued in respect of a vehicle for use as a private car, the maximum capacity being of 10 persons including driver.

The third respondent inspite of service has not appeared. The second respondent is present through counsel who seeks adjournment on the ground he needs to seek instructions.

Reply, if required, may be filed within four weeks.

Be listed for hearing on 2nd November, 2017”.

5. When the matter is taken up for hearing today, there is no appearance on behalf of the second or third respondents. No reply has been filed by the said respondents inspite of the opportunity granted.

6. The submission of the learned counsel for the insurer is correct to the effect that the liability of the insurer is primarily governed by the contract of insurance policy, which was proved during the inquiry by Jitender Dabhai, Assistant Manager (R3W1), deposing on the strength of his affidavit (Ex-R3W1/A). The said witness proved the certificate of insurance (R3W1/1) which clearly shows that the third respondent (the registered owner of the vehicle) had taken up the third party risk insurance cover declaring the vehicle to be a private vehicle with a seating capacity of ten persons. The evidence of PW2, in contrast, has brought out vividly that the vehicle was being used for commercial purposes, the claimant (PW2) also having travelled in it after paying hire charges. Even the maximum capacity of passengers was exceeded, the evidence showing the vehicle to be carrying 15-16 persons at the time of mishap.

7. Clearly, the above are breaches of terms and conditions of the insurance policy. The plea of the insurance company for recovery rights against the second and third respondent is, therefore, granted. For enforcing such rights, the insurance company will have the liberty to take out execution proceedings before the tribunal.

8. The statutory amount shall be refunded to the insurance company.
9. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 2, 2017
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