$~5

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

Decided on: 31st August, 2017

\+ MAC.APP. 823/2015 and CM 23891/2015

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

TARUN & ANR ..... Respondents

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocate for R-1

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

JUDGMENT (ORAL)

1. The appeal at hand has been filed by the insurance company, it concededly being the insurer against third party risk in respect of the motor vehicle described as Maruti Gypsy bearing registration on.HR-26H-4656 assailing the judgment dated 27.07.2015 of the Motor Accident Claims Tribunal (Tribunal) on the accident claim case (suit no.288/12) of the first respondent (claimant), *inter alia*, on the ground that it could not have been fastened with the liability to pay the compensation since the party it had contracted with in terms of the insurance policy was Devender Kumar Gupta, who was not impleaded as a party respondent.

2. It appears that the claimant assumed that the insurance cover would be in the name of the second respondent (Arun Gupta) in whose name the registration certificate appears to have been issued. The learned counsel for the claimant fairly concedes that the insurance policy is not in the name of Arun Gupta but in the name of Devender Kumar Gupta. He thus submitted that the appeal may be allowed and the impugned judgment may be set aside but requested that the matter may be remanded to the tribunal so that the claimant can take appropriate steps to implead the person insured as a party.

3. The appeal is allowed. The impugned judgment is set aside.

4. The mater is remanded to the tribunal for further proceedings in accordance with law. The claimant would be given one adjournment by the tribunal to take appropriate steps to implead the additional respondent and thereafter proceed further to adjudicate upon the claim petition afresh.

5. By order dated 16.10.2015, the insurance company was called upon to deposit the entire awarded amount with the Registrar General of this court and out of such deposit, 50% was released to the claimant, the balance kept in interest bearing fixed deposit account. The balance in fixed deposit account shall be presently refunded with statutory deposit to the insurance company. The claimant (first respondent here) will also be obliged to return the money received by him including interest to the insurance company which he must do through the tribunal within 30 days hereof. This, however, would not preclude him to press for necessary relief against the insurance company at the time of fresh adjudication.

6. The parties shall appear before the tribunal on 10.10.2017.

7. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 31, 2017
yg