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

Date of Order: August 01, 2018

\+   **MAC.APP. 256/2013**
\+   **MAC.APP. 257/2013**

THE ORENTAL INSURANCE COMPANY LTD...... Appellant
Through: Mr. JPN Shahi, Advocate

versus

HITESH SADH & ORS.
NIDHI SADH & ORS. .....Respondents
Through: Mr. S.N. Parashar, Advocate for respondents-Claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R
(ORAL)

1. The above-captioned two appeals arise out of common impugned Award of 12th December, 2012 vide which the Motor Accident Claims Tribunal-02, South District, Saket Courts, New Delhi *(hereinafter referred to as 'the Tribunal')* grants compensation of ₹6,15,000/- to Injured-*Hitesh Sadh* and ₹2,74,000/- to Injured-*Nidhi Sadh*, who were grievously injured in a vehicular accident which took place on 17th June, 2006. The Tribunal holds that appellant is the Insurer of offending vehicle in question and even though the driving licence of driver of insured vehicle was found to be fake, it chooses not to exonerate appellant-*Insurer* while relying upon Supreme Court's decision in *Kamala Mangalal Vavayni & Ors. v. United India Insurance Co. Ltd. and Others,*

(2010) 12 SCC 488. However, recovery rights have been granted to appellant-*Insurer* while relying upon Supreme Court's decision in *National Insurance C. Ltd. v. Vasdev Kukreja & Ors.,* II (2010) ACC 148.

2. The facts and the breakup of the compensation granted by the Tribunal, as already noticed in the impugned Award, are not required to be adverted to, as the appellant-*Insurer* seeks exoneration to pay the awarded compensation. There is no challenge to impugned Award on the quantum aspect.

3. Attention of this Court is drawn to a statement made by *Jaideep Kumar* to local police regarding nobody being at fault in happening of this accident. So, it is submitted by appellant's counsel that appellant-*Insurer* deserves to be exonerated from paying the awarded compensation.

4. On the other hand, learned counsel for respondents-*Claimants* supports the impugned Award and submits that appellant has been rightly saddled with liability to pay the awarded compensation. The driver and owner of insured vehicle in question have not come forward to contest these appeals.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decisions referred to above, I find that Supreme Court in *Manuara Khatun and Others v. Rajesh Kumar Singh and Others,* (2017) 4 SCC 796 has declared that it is the duty of the Insurer to satisfy the Award first and to observe so, principle of *'pay and recover'* has been invoked. In the facts and circumstances of this case and in light of

Supreme Court's decision in *Manuara Khatun (supra)*, this Court, while invoking the principle of *'pay and recover'*, is not inclined to exonerate appellant-*Insurer* to pay the awarded compensation.

6. The Tribunal has rightly granted the recovery right to appellant with rider to first pay the awarded compensation and then to recover from the driver and owner of the vehicle in question. Applying the ratio of Supreme Court's decision in *Manuara Khatun (supra)* to the facts of instant case, both the appeals are hereby dismissed. Statutory deposit, if any, be refunded to appellant-*Insurer*. The Registry is directed to release the awarded compensation deposited by appellant to the respondents-*Claimants* in the manner as indicated in the impugned Award.

7. With aforesaid directions, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 01, 2018
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