

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

Date of Decision: October 04, 2018

+ **MAC.APP. 582/2013**

+ **MAC.APP. 584/2013**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Advocate

versus

ARJUN DASS & ORS

SHANTI DEVI & ORS

.....Respondents

Through: Mr. Anshuman Bal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. In the above captioned appeals, recovery rights are sought against driver and owner of insured vehicle. Since these appeals arise out of common impugned Award, therefore, with the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment.

2. The challenge in these appeals to impugned Award of 6th April, 2013 rendered by *the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal')* survives *qua* respondents No.9 & 10 i.e. driver and owner of insured vehicle against whom appellants seek recovery rights. The facts as noticed in the impugned Award are as under:-

“The case of the petitioners is that on 27.04.2008 at about 10:20 PM the deceased along with his mother Shanti

Devi/ petitioner no.2 was going to his house. When they reached CRP camp main road Hirankudna Village, Nangloi, Delhi a truck bearing no. HR-38D-3867 came from behind at a very high speed driven rashly and negligently and hit the deceased and his mother, as a result the deceased sustained serious injuries and died in the hospital, whereas his mother was seriously injured in the accident. The driver of the truck ran away from the spot after causing the accident. In total the legal heirs of deceased have claimed a sum of Rs.20,00,000/- on account of death of the deceased.”

3. In view of order of 17th July, 2017, these appeals now survive on the liability aspect only. As per orders of 23rd February, 2015 and 26th May, 2015, respondents No. 9 & 10 are duly served, but there is no representation on their behalf.

4. Learned counsel for Appellant-Insurer submits that the liability aspect has not been addressed by the Tribunal in the impugned Award on the erroneous assumption that appellant had not led any evidence before the Tribunal. Attention of this Court is drawn to deposition of appellant's witness-Assistant Manager-Jagat Ram (R3W1) to point out that this witness has proved the Insurance Policy in question as well as Notice under Order 12, Rule 8 of CPC issued to the driver and owner of the insured vehicle to produce the original Insurance Policy, driving licence and the Permit. It is also pointed out that this witness has deposed about the Verification Report (R3W1/18) from the concerned Licencing Authority regarding the driving licence in question not being valid on the day of the accident. It is pointed out that the Dealing Clerk-Rathindra Mohan Goswami from the concerned licencing authority had also

deposed before the Tribunal as R3W2 in respect of driving licence in question and the Tribunal has erred in not considering the evidence of this witness to grant recovery rights to appellant. Thus, recovery rights qua owner and driver of insured vehicle are sought in these appeals.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the Tribunal has erred in not dealing with the evidence led by appellant-Insurer and by observing that appellant had not led any evidence. The driving licence Verification Report (*Ex.R3W1/I8*) of driver of insured vehicle is duly proved on record. In the face of evidence of appellant's witnesses-*Jagat Ram (R3W1)* and *Rathindra Mohan Goswami (R3W2)*, the liability aspect is required to be considered. The insured vehicle in the instant case is a Truck, which is a commercial vehicle. The evidence of appellant's witness-*Jagat Ram (R3W1)* is of secondary nature. The primary evidence is of *Rathindra Mohan Goswami (R3W2)*, who has deposed that the driving licence of driver of insured truck was not issued by the concerned licencing authority, but in the cross-examination, this witness (*R3W2*) has categorically deposed that the record regarding commercial/heavy motor vehicles is maintained separately. This witness (*R3W2*) has also admitted in his cross-examination that he has not brought the record for Heavy Vehicles Driving Licences for the year 2003 or for the year 2006. The driving licence (*Ex.PW1/I3*) was purportedly issued on 7th August, 2006. Since the record for Heavy Vehicles Driving Licence has not been brought by this witness, therefore, it cannot be said that there is no record of the driving licence (*Ex.PW1/I3*), for commercial vehicle.

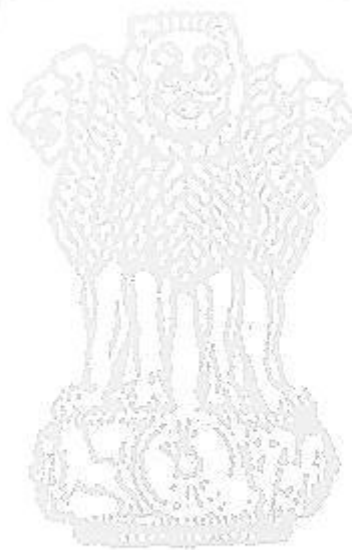
6. In view of aforesaid, this Court is of the considered opinion that appellant-Insurer is not entitled to grant of recovery rights against driver and owner of Insured vehicle. As such, finding no substance in these appeals, they are accordingly dismissed. The compensation granted by the Tribunal be released to Claimants in the ratio already indicated in the impugned Award.

7. These appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 04, 2018

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