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

+ **MAC.APP. 450/2016 & CM Nos. 20447-49/2016**

VAISHALI & ANR

..... Appellants

Through: Mr. Kshitij Mittal & Mr. Anshul
Mittal, Advs.

versus

**SUMITRA & ANR (TATA AIG GENERAL INSURANCE
COMPANY LTD)**

..... Respondents

Through: Mr. Rakesh Kumar Shukla &
sMr.Ramesh Chandra, Advs. for R-1.
Mr. Rudra Kahlon & Ms. Vandana
Kahlon, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% 07.03.2018

The background facts and the grievances of the appellants in the present appeal were set out at length in the order dated 26.05.2016 which reads as under:-

“The claim case (suit No.85/15) of the first respondent (claimant) was filed on 18.04.2015 in the wake of proceedings arising out of detailed accident report (DAR) that had been submitted on 11.03.2015. It appears the first and second appellants were represented before the tribunal on 11.03.2015 when the matter had been adjourned for filing of legal offer/conciliation/reply in answer to the DAR. It is argued that in the DAR the police had not described the second appellant as the owner of the offending vehicle. A copy of the registration certificate of the alleged offending vehicle has been filed on record (page 44) and shows the vehicle is owned and registered in the name of the first appellant only, though she is

daughter of the second appellant. When the claim petition was filed on 18.04.2015, only the insurance company was represented. The matter was adjourned for further proceedings to 06.07.2015 when the tribunal set the appellants ex-parte. It appears from the copy of the proceedings filed that no notice had been issued till that date on the claim petition in the names of the appellants. On application under Order 9 Rule 7 CPC being moved on 15.09.2015, the tribunal allowed the same and set aside the ex-parte orders. Yet, it proceeded to immediately commence the inquiry by recording the statement of the claimant (as PW1). The proceedings have eventually led to award being passed, inter alia, holding the second appellant also liable jointly and severally to pay compensation.

The prime contention of the appellants is that they have not been given any opportunity to defend. The submission of the appellants is that the finding holding the first appellant guilty of negligent driving is perverse and further that the tribunal did not even take note of the fact that the second appellant has nothing to do with the vehicle in question, as was especially pointed out in the application under Order 9 Rule 7 CPC which was considered and allowed by the tribunal. The appellants also submit that the tribunal has included Rs. 2 lakhs in the award on account of medical expenses even though it noted that no medical opinion or prescription had been filed with regard to the claim for future surgical procedures or treatment and that the claimant, appearing as her own solitary witness, had referred to expenditure only to the tune of Rs. 71,741/-.

Issue notice to the respondents on requisite steps being taken returnable on 21st December, 2016 before the Joint Registrar (Judicial) for completion of service and pleadings.

At this stage, Mr. Priyadarsi Acharya, Advocate appears and accepts notice on behalf of second respondent (insurer). He confirms that he has received copy of the paper book complete in all respect.

Meanwhile, the enforcement of the award is stayed till next date of hearing.

Dasti”.

The first respondent (the claimant) has appeared through counsel and has submitted reply. At the hearing, however, it is fairly conceded by the

counsel appearing on her behalf that given the deficiency in the procedure as noted in the afore-quoted order dated 26.05.2016, the appeal may be allowed and the impugned judgment dated 12.01.2016 of the motor accident claims tribunal on the claim case (suit no. 85/15) be set aside, his request being that the matter may be remitted to the Tribunal for further inquiry in accordance with law concededly wherein the appellants, they being respondents in the said claim case, would be entitled to file written statement and, thereafter, participate in the inquiry after framing of the issues, also taking objections, if so advised, with regard to the propriety of impleadment of the second appellant in such procedure.

Thus, with the consent of both sides, the aforementioned judgment of the Tribunal is set aside and the claim case is revived on the file of motor accident claims tribunal for further proceedings.

The parties are directed to appear before the Tribunal on 13th March, 2018, as is stated to be already fixed.

The appeal and the pending applications stand disposed of in above terms.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

MARCH 07, 2018

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