

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

Date of Order: September 17, 2018

+ **CM(M) 1118/2018 & CMs 38119-20/2018**

THE NEW INDIA ASSURANCE COMPANY LTD..... Petitioner

Through: Mr. Parveen Kumar Mendiratta,
Advocate

versus

RAJBIR SINGH & ORS.

.....Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Impugned order of 9th May, 2018 allows application under Order 9, Rule 13 of CPC of first respondent, who is owner of the insured vehicle, and sets aside Award of 25th September, 2009 qua petitioner. The challenge to impugned order by learned counsel for petitioner is on the ground that the Tribunal has erroneously set aside the Award, as in the order-sheet of 2nd November, 2007, presence of driver and owner of the insured vehicle was recorded. It is submitted that the Award in question cannot be set aside in piecemeal qua petitioner and if at all, it has to be set aside, then it has to be set aside as a whole.

2. Upon hearing and on perusal of impugned order, I find that the conclusion of the Tribunal to the effect that there is nothing on record that first respondent was served, is unassailable. Therefore, the Award in

question has been set aside. Whether it has to be set aside as a whole or qua petitioner only, is a question, which is required to be considered in light of the fact that the awarded compensation has been already paid by petitioner to the Claimants. In such a situation, the Tribunal has rightly modified the relief of quashing the Award of 25th September, 2009 qua petitioner only.

3. Although first respondent has to file a reply to the Claim Petition, but the subject matter of consideration before the Tribunal is whether driving licence in question is fake or not and as to whether grant of recovery rights to petitioner against first respondent is justified or not. This aspect can be considered without setting aside the Award of 25th September, 2009 as a whole.

4. In light of the aforesaid, finding no fault with the impugned order, this petition and the applications are accordingly dismissed.

(SUNIL GAUR)
JUDGE

SEPTEMBER 17, 2018

s