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

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Decided on: 29.08.2019

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MAC.APP. 333/2019 & CM Nos.10374 & 14984/2019

ORIENTAL INSURANCE CO LTD.

..... Appellant

Through: Mr. R. K. Tripathi, Advocate.

Versus

AJAY GAUR & ORS.

..... Respondents

Through: Mr. Bhupesh Narula, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. Notice was sought to be effected upon respondent no. 4 – United India Insurance Company through ordinary process. However, the same was refused. The remarks of the Process Server - Mr. Gautam Madan, who visited respondent no. 4 on 13.08.2019 at 3.04 p.m., reads as under:-

“Today I Reached The Given Address And Enquired About The Concerned Person Who Shall Receive The Said Notice . On The Spot The Branch Manager Sunita Suman Declared Herself To Be The Said Receiving Person. I Served The Summons To Her And She After Going Through The Contents Returned The Said Summons By Saying That The Said Case Does Not Pertains To Their Branch. Hence The Said Notice Remained Unserved.”

2. The Court would note that the address mentioned in the appeal is the same as was given in the Memo of Parties before the learned MACT. In the circumstances, the aforesaid refusal is deemed served upon the said respondent.

3. The case of the appellant is that despite there being a Knock-for-Knock Agreement between the insurance companies, wherein the insurer of the damaged vehicle is to pay damages for the insured vehicle, irrespective of the fact as to which insured vehicle is the cause of the damage, and furthermore subrogation rights would not be sought against the insurer of the offending vehicle. This aspect has been duly considered in the impugned order as under:-

“16. I have heard rival submissions advanced by counsel for the parties, perused the record carefully and gave my thoughtful consideration to their contentions.

(i) From the testimony of R4W1, it is clear that claimant had submitted own damage claim with respondent no.4 and a claim of ₹7,15,000/- was passed, but since claimant failed to comply with certain formalities, the amount could not be released. He further testified that claimant had not withdrawn the said claim till date. He also admitted, that at the time of insurance; claimant had disclosed the value of the car to the sum of ₹8,23,650/-. He further admitted that Knock for Knock Agreement has been executed among all the insurance companies under which it is agreed that the claim for damaged vehicle shall be submitted before the company with whom the vehicle is insured.

(ii) Counsel for respondent no.3 filed the copy of Knock for Knock agreement. Perusal of the same reveals that irrespective of the negligence, insurance companies are liable to satisfy the claim submitted before them by the claimants. It

further reveals that said Knock to Knock agreement is not mandate of any Regulator, but it is an internal understanding among insurance companies. Relevant clauses of the Knock for Knock Agreement are reproduced as under.

Knock for Knock Agreement:

(i) Therefore, insurers have entered into an agreement (called Knock for Knock Agreement) according to which, irrespective of who was negligent, provided the damage is covered under the policy, the insurers covering the damage will not exercise subrogation rights against the party involved in the accident. Instead they will indemnify their insured subject to the terms of policy.

Similarly, the other insurers will insured provided the damage is covered under the policy. In other words, each insurer will indemnify their insured.

This agreement, however, does not apply to goods vehicles policies and Public Service Vehicles (i.e. Taxies, Buses) used for hire or reward, and technically the insurers are free to enter into litigation to recover losses caused by such vehicles.

Definition:

The dictionary defines the term "Knock for Knock" as an agreement between auto insurers that in the even (sic) of an accident each insurance company will pay for the damage to the vehicle insured with it without attempting to establish blame for the accident.

Why do Insurers have this Agreement?

Every year the insurers sign a Knock-for-knock agreement with all other insurers. The insurers do so to avoid getting into litigation and unnecessary delays by dragging the matter to the court on account of third-party policies. So instead of finding whose fault it is and making the insurer compensate the victim, both the

insurers of both the vehicles pay for the damages of their insured vehicles respectively. This is an internal understanding among the insurers and is not mandated by the regulator.

(i) From bare perusal of Knock for knock agreement, it is clear that the said agreement does not disqualify the claimant either to claim compensation from his insurance company or from the insurer of the offending vehicle.”

4. What emanates from the above is that the conclusion that the Knock-for-Knock Agreement does not limit the rights and the freedom of the claimant to claim compensation from either of the insurer companies. The court is of the view that while the aforesaid liberty may be available to a claimant, nevertheless, the Knock-for-Knock Agreement has been brought about between the insurance companies for orderly indemnification of damage to motor vehicles. The Scheme to streamline claims between the insurance companies should be given effect to, in the larger interest of administration and settlement of claims of the insurance industry. One of the objectives of this Agreement is that settlement of claims should not be delayed. In the present case, the accident happened in the year 2015 and the claim of the car has not been settled as yet. The monies should have been paid to the claimants by now. Insofar as the Award has been pressed apropos damage to the vehicle at an amount of Rs.8,24,000/-, the same would be payable by the insurer of the vehicle in terms of the Knock-for-Knock Agreement, as mentioned hereinabove.

5. The impugned order is modified to the extent that respondent no. 4 – United India Insurance Co. Ltd. shall pay the aforesaid amount alongwith interest accrued thereon, as specified in the Award, to the claimant within

three weeks of receipt of a copy of this order. The amounts deposited shall be released to the beneficiary of the Award in terms of the scheme of disbursement specified therein.

6. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, shall be refunded to the insurance company.

7. The appeal, alongwith pending application, stands disposed-off in the above terms.

AUGUST 29, 2019

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NAJMI WAZIRI, J.



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