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

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Decided on: 20.11.2019

+ MAC.APP. 70/2016

ORIENTAL INSURANCE COMPANY LTD Appellant

versus

SURMISHTA BERI & ORS

..... Respondents

+ MAC.APP. 71/2016

ORIENTAL INSURANCE COMPANY LTD Appellant

versus

MEENU MAINI & ORS

..... Respondents

+ MAC.APP. 73/2016

ORIENTAL INSURANCE COMPANY LTD Appellant

versus

SUSHILA SETH & ORS

..... Respondents

+ MAC.APP. 74/2016, CM APPL. 2683/2016 & CM APPL. 2684/2016

ORIENTAL INSURANCE COMPANY LTD Appellant

versus

TARSEM LAL BERI & ORS

..... Respondents

+ MAC.APP. 75/2016

ORIENTAL INSURANCE COMPANY LTD Appellant

versus

MAHINDER NARAIN SETH & ORS

..... Respondents

Through: Mr. Ravi Sabharwal, Advocate for
appellant.

Mr. S.W. Nomani, Advocate (Mob. 9559697352, 8750643639) for respondents.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals impugn the award of compensation dated 20.10.2015 passed by the learned MACT in MAC No. 149/12 against i) the non-grant of right of recovery against the vehicle owner and ii) for the interest being awarded @ 12%, when for the past half-a-decade, interest on compensation has been granted @ 9% p.a.
2. The learned counsel for the claimants fairly submits that he has no objection to the rate of interest being reduced from 12% to 9%. It is, therefore, ordered that the interest shall be paid @ 9% and not @ 12%.
3. Let the awarded amount, alongwith interest @ 9% per annum from the date of filing of the claim petition till its realization, be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.
4. The appellant seeks right of recovery against the owner and the driver of the offending insured-vehicle on the ground that the National Permit was not available at the time of the accident which occurred on 22.07.2012.
5. The learned Tribunal's reason for declining the right of recovery is as under:

“77. Heard and perused the record. It is correct that notice u/o 12 rule 8 CPC Ex.R3W1/B was issued to the owner of the vehicle to produce permit and insurance policy of the vehicle in question upon which owner has allegedly

provided the Authorization certificate of NP Goods Ex.R3W1/D. The Authorization Certificate shows that validity of NP authorization is till 10.01.2014. There is an endorsement in the RC that this authorization has been issued on 06.02.2014.

78. The insurance company has placed photocopy of the Authorization Certificate on record. To my mind, insurance company should have summoned the record from the office of Secretary, RTA, Karnal, Haryana to prove that the vehicle was not having Authorization Certificate of NP Goods on the date of accident. The summoning of the record was essential even further to show that even no temporary Authorization Certificate of NP goods was issued to the owner of the vehicle. No such evidence is on record. The insurance company has failed to prove that there was breach of terms and conditions of the policy. Support is drawn from "Bhikhari Yadav and.ors. vs Bajaj Allianz General Insurance Co. Ltd." 2012(130)DRJ1571. The argument does not hold water.

79. The offending vehicle is duly insured as respondent no. 3. There is nothing on the record to show that there was violation of the terms and conditions of, the insurance policy. The insurance company i.e. The Oriental Insurance Co. Ltd. shall pay the compensation to the petitioners."

6. What emanates from the above is that the National Permit was valid till 10.01.2014. If there was any error or fraud in its issuance as contended by the insurer, then the same should have been proven by summoning relevant records but the insurer chose not to do so. Therefore, the insurer's contention not being proven, the policy was deemed to be valid and the insurer was held liable to indemnify the loss caused on account of the

insured offending vehicle. The impugned order found no violation of the terms and conditions of the insurance policy which was valid from 14.01.2012 to 13.01.2013. In other words, before issuance of the insurance policy, the insurer would have asked for examining the relevant documents or permits prior to the issuance of the Cover Note/insurance policy. Not having done so at that stage, it is not fair for the insurer to ask for it now. Surely, the insurer must have kept a copy of the relevant requisite records with itself, which could have been produced at the time of trial proceedings. Having failed to do so, it now seeks to raise the defense that no such documents existed.

7. Having issued the policy, it would be presumed that the vehicle owner had provided the requisite documents to the insurer at the time of the issuance of the Cover Note/insurance policy. If the requisite documents were not available at the relevant time, then the insurer ought not to have issued the insurance cover. The insurer would surely know that third-party liability could arise due to use of the vehicle in breach of statutory conditions, therefore, at least at the time of issuance of the insurance cover, it should have examined the relevant documents. The insurer has failed to show that the National Permit was not valid. For the reasons mentioned hereinabove, it cannot resile away from its liability to indemnify the losses caused to third-parties caused by the offending insured vehicle. Hence, there is no reason to interfere with the impugned order in this regard. The said contention is rejected.

8. The appeals are disposed-off in the above terms.

9. Since the appellant has partly succeeded in the appeals, let the statutory amount, alongwith interest accrued thereon, be returned to it.

NAJMI WAZIRI, J

NOVEMBER 20, 2019/AB

