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

% *Decided on: 12.12.2019*

\+ MAC.APP. 129/2017

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Tarkeshwar Nath and Mr. Mahavir Singh Rawat, Advocates.

versus

KUSUM & ORS ..... Respondents

Through: Mr. Anuj Saini, Advocate for R-1 to R-4, LRs of R-5 & R-6.
Mr. Lalit Bhardwaj and Mr. Shubhanan Chaturvedi, Advocates, Advocate for R-7 & R-8.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 44538/2019 (by petr. for recalling of order dt. 23.09.2019)

1. Issue notice.

2. The learned counsels named above accept notice on behalf of the non-applicants.

3. For the reasons mentioned in the application, the order dated 23.09.2019 is recalled.

4. The appeal is restored to its original number.

5. The application stands disposed-off.

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6. This appeal impugns the award of compensation dated 03.10.2016, passed by the learned MACT in Suit No. 4742/16, on the ground that the insurer has been wrongly held liable to pay the awarded compensation against a vehicle which did not possess a registration number or even a temporary registration number, at the time of the motor accident. Therefore, there was a fundamental breach of the policy conditions, for which the insurer cannot be held liable. On 19.07.2019, the following order was passed:

> *"CM APPL. 23451/2019 (by R-1 for release of amount)*
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> *The learned counsel for respondent nos. 7 and 8 is unable to assist the Court,*
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> *It is the appellant's case that the vehicle was not registered on the date of the accident i.e. 21.04.2013 and that the temporary registration of the vehicle was valid upto 12.04.2013, The vehicle was being plied without a valid registration on a public road in breach of a condition of the Insurance Policy, In the circumstances, the insurer would not be liable to pay any damages whatsoever.*
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> *In view of the above, the owner of the vehicle/respondent no. 8 is directed to deposit such amounts, as may be released to the applicant/beneficiary of the Award, who suffered on account of the unfortunate demise of their kin.*
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> *The awarded amount is Rs. 16,37,000/-, alongwith interest @ 9% per annum from the date of filing of petition i.e. 20.05.2013 till realization of the Award. The widow/mother and the two minor children were apportioned 1/3rd each of the awarded amount. The mother was additionally given Rs. 50,000/- for the 'loss of consortium'. The appellant has already deposited 50% of the awarded amount. The accident happened in April, 2013. Since then, no monies have been received by*

the claimants, who are the widow and the minor children of the deceased.

At this stage, the Court would note that the other applicants i.e. the children would also be entitled to compensation for loss of parental consortium in terms of the dicta of the Supreme Court in Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & ors. Civil Appeal No. 9581/2018 decided on 18.09.2018. However, this issue will be dealt with at a later stage.

Be that as it may, the mother seeks release of some monies for the education of the school-going children, who are studying in class IV and Class VI, respectively.

In view of the above, let Rs. 2 lacs be released to the mother/applicant from the interest accrued and/or from the principal amount of her share of the damages.

The owner of the vehicle/respondent no. 8 is directed to deposit Rs. 2 lacs, to safeguard the interests of the insurance company, which has challenged the Award on the basis of no liability. Let Rs. 2 lacs be deposited by respondent no. 8 before the learned MACT, within three weeks from the receipt of a copy of this order.

The application is disposed-off in the above terms.

A copy of this order be given dasti to the learned counsel for the parties under the signature of the Court Master."

7. In view of the aforesaid order, it is not denied that the temporary registration number issued by the transport authority was valid only till 12.04.2013.

8. On a query put to the learned counsel for the owner of the offending vehicle, as to whether an extension of the said temporary registration number was sought prior to the expiry of the said registration and/or prior to

the date of accident which occurred on 21.04.2013, the answer is in the negative. In effect, the vehicle was being plied on a public road without even a temporary registration number, let alone a permanent registration number.

9. The learned counsel for the owner and the driver refers to the judgment of the Supreme Court in *Narinder Singh Vs. New India Assurance Company Lid. & Ors.,* (2014) 9 SCC 324, which held *inter alia* as under:

> *"11. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner."*

10. The said judgment does not come to the aid of the vehicle owner because, all it says is that a temporary registration could be issued under section 39, while under section 43 and the said registration could be extended from time to time. However, for such extension, a request and appropriate application ought to have been filed which in the present case was not done. The owner of the vehicle chose not to do so.

11. The learned counsel for the owner of the vehicle submits that the insurance policy was valid at the time of the accident, however, it is to be noted that the validity was conditional upon the vehicle being registered i.e. it having a valid registration number.

12. The Court would note that the insurance policy was issued for a period of 13.03.2013 till the midnight of 12.03.2014. The claimants and the unfortunate victim of the motor vehicular accident would have known little about the technicalities of the insurance policy. Keeping in view the benevolent object of the act i.e. to pay the compensation to the claimants, the insurer under the 'principle of pay and recover', as enunciated by the Supreme Court in *Manuara Khatun vs. Rajesh Kumar Singh*, (2017) 4 SCC 796, the same is invoked in this case. *Manuara Khatun* (*supra*) held *inter alia*:

> *"15. This question also fell for consideration recently in National Insurance Co. Ltd. v. Saju P. Paul [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [Saju P. Paul v. National Insurance Co., 2011 SCC OnLine Ker 3791 : 2012 ACJ 1852] of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the*

> *benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover""*

13. In *Shamanna and Another vs. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.,* (2018) 9 SCC 650, Supreme Court held *inter alia* as under:

> *"**6.** As per the decision in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] , onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, "pay and recover" can be ordered in case of third-party risks. The Tribunal is required to consider*
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> *"as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver … does not fulfil the requirements of law or not will have to be determined in each case"."*

14. However, insofar as the claimants are concerned, since there was an insurance policy, therefore, under the 'principle of pay and recover', the appellant shall pay the monies to the claimants and shall have the right of recovery of the same from the owner of the offending vehicle. It would be just to apply the said principle in the present case for the compensation amount deposited by the insurer to be released to the beneficiary(ies) of the

Award in terms of the scheme of disbursement specified therein and to recover the same from the owner of the vehicle.

15. The amount already deposited by respondent no. 8 shall be paid to the insurer alongwith interest accrued thereon and the insurer shall have the right to recover the amounts from the respondent-owner of the vehicle.

16. The appeal is allowed and disposed-off in the above terms.

17. The statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

DECEMBER 12, 2019

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