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

% *Decided on: 12.12.2019*

+ **FAO 376/2019, CM APPL. 41253/2019, CM APPL. 41256/2019**

CM APPL. 41254/2019 & CM APPL. 41255/2019

SONI KUMAR

..... Appellant

Through: Mr. P.R. Bahl, Advocate.

versus

SHALIMAN Y& ORS (THR ORIENTAL INSURANCE CO LTD)

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 16.03.2013, passed by the learned MACT in MACT Suit No.1320/08, on account of dismissal of the appellant's application under Order 9 Rule 13 of the CPC which was filed in the recovery proceedings, whereunder the amount of compensation was paid by the insurer to the claimants and thereafter the right of recovery was granted to the insurer against the owner of the offending-insured vehicle.

2. It is the appellant's case that he was never served notice of the said claim proceedings, therefore, the award itself was in breach of fundamental principle of *audi alteram partem*. It is further contended that the appellant had shifted to his native place in Bulandshahr, U.P. long back and notice

was not served upon him. Furthermore, he submits that the correct address was mentioned in the chargesheet filed apropos the accident.

3. The motor accident occurred on 22.10.2008 involving a vehicle registered in the name of the appellant. The vehicle's registration certificate recorded the address of the appellant in Pitampura, Delhi. He claims to have shifted to Bulandshahr, U.P., immediately thereafter but no specific details as to when and where he shifted, has been provided. No documents or details were furnished by the appellant in support of the said contention. However, it is submitted that since the appellant had shifted to Bulandshahr, U.P., therefore, it was incumbent upon the claimants to have sought the appellant's correct address and serve notice upon him.

4. It is further argued that the publication of the notice by way of substituted service in 'Rashtriya Sahara' was of no consequence because the said newspaper has no circulation in District Bulandshahr. At least, not in the area of the appellant's residence there.

5. The Court would note that the appellant had not specified any such date on which he allegedly shifted permanently to Bulandshahr, U.P from his Pitampura address. The Claimant could, at best, have served notice at the appellant's only available address as was mentioned in the Registration Certificate of the car. The notice was sought to be served by the ordinary process at the said address but the report said that the said address did not exist. Thereafter, it was served by way of publication under Order 5 Rule 20 CPC. Nothing else was required to be done on the part of the claimants in this regard. It is after the said publication of notice and non-appearance of the appellant that he was proceeded *ex-parte* on 07.07.2011.

6. The chargesheet was placed on the Trial Court's record in the year 2012. Surely the claimants knew nothing apropos the whereabouts of the appellant-the registered owner of the vehicle; it was the duty of the latter to have had his permanent address duly rectified as the Bulandshahr address with the Transport Authority, if he had so shifted.

7. A life was lost in an unfortunate motor vehicular accident, involving the appellant's motor vehicle, surely there must have been a nagging of his conscience, apropos the bereaved family of the deceased. The appellant knew fully-well who they were. Purely on a humanitarian ground, he should have reached out to them in some manner, but he chose otherwise. Be that as it may, the process of law has been duly complied with. The award was passed after due notice of the claim proceedings, as per established procedure.

8. In view of the above, the impugned order calls for no interference, there is no merit in the appeal. Accordingly, it is dismissed.

NAJMI WAZIRI, J

DECEMBER 12, 2019_{AB}