



\$~28

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

+ CM(M) 543/2018 and CM APPL. 18721/2018 (Stay)

UNITED INDIA INSURANCE CO LTD Petitioner

Through: Mr. Pankaj Seth, Adv.

versus

HORI LAL @ HODEL SINGH & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

%

22.05.2024

1. The petitioner/Insurance Company assails the impugned order dated 05.01.2018 passed by the learned Presiding Officer, MACT, Saket Courts, New Delhi, whereby based on the application under Order IX Rule 13 CPC moved by the judgment debtor along with the driver, the learned Tribunal proceeded to frame the following issues:-

“1) Whether the DL of the JD/Hori Lai/Driver was valid at the time of accident. If so, its effect?

2) Whether the DL produced by the JD was invalid due to verification of Gowhati Authorities as claimed by the DH. If so, its effect? Onus to prove on DH.

3) Relief.”

2. Notice of the present petition has already been served upon respondent No.1/driver and no appearance has been put. Insofar as the respondent No.2/ registered owner is concerned, the proceedings stands abated against him for non-impleadment of his legal heirs within the stipulated time.

3. Learned counsel for the petitioner has urged that the learned



Tribunal, without deciding whether or not there was any sufficient cause for setting aside *ex parte* judgment-cum-award against the applicant/driver, has erroneously proceeded to frame the aforesaid issues.

4. It is also borne out from the record that this Court, *vide* order dated 14.07.2023, stayed the operation of the impugned order passed under Order IX Rule 13CPC. The amount of compensation awarded has already been disbursed to the claimants. The issue in the present matter pertains to non-grant of recovery rights to the petitioner/Insurance Company. *Ex facie*, the issues framed by the learned Tribunal cannot be sustained in law.

5. The learned Tribunal is impressed upon to firstly consider whether or not sufficient cause has been explained in the application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment-cum-award. It is only in this event that the said application is allowed, that the Court may proceed to frame issues with regard to the genuineness of the driving license.

6. Accordingly, the impugned order dated 05.01.2018 passed by the learned Tribunal, is hereby set aside. The matter is remanded back to the learned Tribunal with directions to decide the application under Order IX Rule 13 CPC of the respondent No.1/driver on merits.

7. The petition is disposed of accordingly and the pending application is also disposed of.

DHARMESH SHARMA, J.

MAY 22, 2024/sa