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

Decided on: 27th September, 2017

+ **MAC APPEAL No. 160/2016**

SATISH TIPNIS Appellants

Through: **Mr. Sanjay Gupta, Adv.**

versus

NEW INDIA ASSURANCE CO. LTD. & ORS..... Respondents

Through: **Mr. Pankaj Seth, Adv. for R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By the appeal at hand, the appellant, he being the registered owner of the offending vehicle seeks to assail the recovery rights granted against him in favour of first respondent (insurer) by the motor accident claims tribunal.

2. The appellant is the registered owner of the motorcycle bearing registration no. DL 8SAK 0529, which was involved in the accident that occurred on 13.05.2007 resulting in death of Rajesh Kumar that gave rise to accident claim case instituted by the second respondent, it (case no. 73/2014) resulting in judgment dated 30.10.2015. There is some material on record showing that the appellant had handed over the said motorcycle to his employee M. Priya Swami (R1W3), who was examined at the inquiry before the tribunal, against a formal letter of authorization for its use. It further appears that R1W3, during the

inquiry, by his testimony, claimed that his relative, P. Swami (third respondent), had taken away the motorcycle without his consent and the accident having occurred at the time of such unauthorized use by the third respondent.

3. The tribunal has returned a finding that third respondent was negligent and, therefore, holding him to be the principal tortfeasor. The motorcycle was admittedly insured with the first respondent. It had contested the proceedings before the tribunal on the ground that the third respondent was not holding a valid or effective driving licence. While the insurer tried to prove this assertion by referring to the fact that there had been no response by the appellant to a notice sent under Order 12 Rule 8 CPC, the appellant had relied on the fact that R1W3 to whom the vehicle had statedly been given was a person who was holding a valid or effective driving licence and, thus, he having exercised due diligence.

4. In the facts and circumstances, it would need to be examined as to whether M. Priya Swami (R1W3) would also be liable, since it was he who had the effective control over the vehicle on the crucial date. Further, the continued responsibility of the appellant, he being the registered owner of the vehicle, as indeed of the insurer, would need to be re-adjudicated against the backdrop of facts wherein the third respondent is stated to have taken the vehicle out of the possession of the person entrusted with him, without his consent, it possibly amounting to theft.

5. It has been submitted at the hearing both by the appellant and the insurer, through their respective counsel, that the award in favour

of the claimant has already been satisfied. While the limited inquiry into the above issue is being remitted, it shall not be construed as re-opening of the inquiry into the claim of the second respondent.

6. The appellant, the first respondent and the third respondent are directed to appear before the tribunal for further proceedings in above light on 30th October, 2017. In view of the observations recorded above, the tribunal shall treat M.Priya Swami (R1W3) as having been impleaded as additional respondent to such proceedings. Before proceeding further, the tribunal shall give an opportunity to the insurer and to the appellant to incorporate suitable amendments to their existing pleadings. Needless to add, the additional respondent M.Priya Swami shall also be called upon to file his reply, if any.

7. The right of the insurer to recover the amount of compensation paid by it to the claimant shall be regulated in accordance with the conclusions reached by the tribunal in the aforesaid further inquiry. The evidence already on record will also be considered in addition to such other evidence as may be adduced hereinafter.

8. The impugned judgment insofar as it granted recovery rights against the appellant is presently set aside, the issue having been revived for re-adjudication.

9. The statutory deposit made shall presently be refunded

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 27, 2017

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