

(2011) 09 DEL CK 0244
In the Delhi High Court
Case No : FAO 773 of 2003

New India Assurance Company Ltd.

APPELLANT

Vs

Kushwant Kaur and Others

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149(2)

Citation : (2011) 09 DEL CK 0244

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant;

Judgement

Reva Khetrapal, J.—This appeal is directed against the order dated 09.09.2003 passed by the learned Motor Accident Claims Tribunal awarding an interim compensation of Rs. 50,000/- in favor of the Petitioners u/s 140 of the Motor Vehicles Act, 1988, with a direction to the Respondent No. 1 to deposit the cheques in the sum of Rs. 50,000/- along with interest thereon in the manner apportioned by the learned Tribunal.

2. Although a number of grounds of appeal have been raised and the prayer in the appeal is for setting aside of the impugned order, Mr. Pankaj Seth, the Learned Counsel for the Appellant at the time of hearing has confined his submissions to the findings given by the learned Tribunal in paragraph 7 of the impugned order. He contends that in view of the fact that the Insurance Company has raised a defense u/s 149(2) of the Act to the effect that the insurance policy in question was cancelled on account of the dishonor of the premium cheque on presentation, the learned Tribunal has caused grave prejudice to the Appellant - Insurance Company by recording that: "Admittedly the offending truck was insured for the period 19.04.2002 to 18.04.2003."

3. In view of the aforesaid submissions made by Mr. Seth, the Learned Counsel for the Appellant, it is clarified that the Insurance Company shall be at liberty to

defend the claim petition on the ground of dishonor of the premium cheque by adducing evidence in this regard at the time of trial and no observation made in the impugned order shall prejudice the rights of the Appellant - Insurance Company in any manner.

4. The appeal stands disposed of with the aforesaid observations.

5. The record of the Claims Tribunal is sent back forthwith. Parties are directed to appear before the learned Claims Tribunal on 17th October, 2011.

6. Court notice may be issued by the learned Claims Tribunal to the concerned parties.

7. A copy of this order is given dasti to the counsel for the Appellant, as prayed.