

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.583/2008**

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Date of decision: 27th August, 2009

NATIONAL INSURANCE COMPANY LTD Appellant
Through : Ms. Manjusha Wadhwa, Adv.

versus

SH. VASDEV KUKREJA & ORS Respondents
Through : Ms. Manjit Chawla, Adv. for R-1
Mr. Asutosh Lohia, Adv. for R-2 & R-3.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.51,494/- has been awarded to the claimant.

2. The accident dated 16th August, 2005 resulted in grievous injuries to the claimant/respondent No.1 who filed the claim petition before the learned Tribunal.

3. The learned Tribunal awarded Rs.51,494/- to the claimant/respondent No.1. The appellant contested the claim petition on the ground that the driving licence of the driver of the offending vehicle was issued in respect of the motorcycle and

LMV (NT) whereas the driver was driving a commercial vehicle. The learned Tribunal accepted the plea of the appellant and directed the appellant to pay the award amount to the claimant and granted recovery rights to the claimant to recover the award amount from the owner of the offending vehicle.

4. The only ground urged by the learned counsel for the appellant at the time of the hearing is that the appellant is not at all liable to pay the award amount to the claimant and, therefore, the learned Tribunal should have passed the award against the owner of the offending vehicle only.

5. Where the driver does not hold any driving licence, the liability to pay compensation in respect of the accident is of the driver and owner only and the insurance company is not liable. However, where the driver is holding a licence but there is some violation as to the category of the vehicle which the driver is authorized to drive, the primary liability to pay the award amount is of the insurance company and the recovery rights are granted to the insurance company to recover the award amount from the owner of the offending vehicle.

6. In the present case, the driver of the offending vehicle is admittedly holding a valid driving licence but there is violation with respect to the purported category of vehicle being driven by the driver. In that view of the matter, the learned Tribunal was justified in passing the award against the appellant.

7. The appeal is dismissed.

8. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of order dated 7th January, 2009. The Registrar General is directed to release the amount deposited by the appellant to the claimant/respondent No.1.

9. Learned counsels for the parties submit that the appellant has not adjusted the statutory amount while depositing the award amount. The Registrar General is, therefore, directed to also release the statutory amount to the appellant within two weeks.

J.R. MIDHA, J

AUGUST 27, 2009
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