

* IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App. No.139/2010

Date of Decision: October 05, 2010

SHIV DEVI & ORS Appellants
through Ms. Pooja Goel, Advocate

versus

MANOJ KUMAR & ORS Respondents
through Mr. S.L.Gupta, Advocate for
respondent No.3.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J. (ORAL)

The only grievance of the appellants against the impugned award of the Motor Accident Claims Tribunal dated November 20, 2009 is that the Claims Tribunal has exonerated the Insurance Company from making payment of the awarded amount on the ground that the offending vehicle was being driven by the driver without a driving licence in breach of the insurance policy.

It is submitted by learned counsel for the appellants that the evidence led by the Insurance Company to prove that the driver did not have a driving licence, hardly justified that conclusion.

On a perusal of the impugned award, I find that the only evidence which the Insurance Company had placed on the record was a notice issued by it to the owner and driver of the offending vehicle under Order 12 Rule 8 of the Code of Civil Procedure (hereinafter called the "Code") calling upon them to produce the driving licence. The Claims Tribunal on the basis of that notice alone and having regard to the fact that the owner and the driver did not respond to the notice has held that the driver did not possess a valid and effective driving licence. The appellants, on the other hand, had produced a driving licence before the Claims Tribunal, to which the impugned award makes no reference.

Having heard learned counsels for the parties, I am of the view that the mere issuance of notice under Order 12 Rule 8 of the Code by the Insurance Company to the owner and the driver of the offending vehicle does not go to prove much less conclusively that the driver of the offending vehicle did not possess a driving licence, more so when a licence was produced by the claimants. The Insurance Company should have got the same verified from the concerned Transport Authority. Not only did it not get the same verified when the case was pending before the Claims Tribunal, but failed to do so even in appeal before this Court.

It is not disputed by the Insurance Company that the vehicle in question was insured with it and it had received the premium from the owner of the vehicle. In this view of the matter, I direct the Insurance Company to pay the awarded amount to the claimants in terms of the award of the Tribunal. However, I do grant to the Insurance Company

the right to recover the same from the owner and the driver of the offending vehicle. Let the awarded amount be paid within four weeks from now.

The appeal is disposed of.

REKHA SHARMA, J

OCTOBER 05, 2010
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