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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: May 20, 2010

+ MAC Appeal 296/2010

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Shri Anur Jain

Through: Ms. Gurmeet Kaur Kapur, Advocate

20.05.2010

...Appellant

Versus

United India Insurance Company Ltd. & Ors.

Through: nemo

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORAL

1. This appeal has been preferred by the owner of vehicle involved in an accident against an award dated 16th January 2010 passed by Motor Accident Claims Tribunal ("Tribunal", for short) whereby the learned Tribunal awarded a sum of Rs.4,57,304/- to the claimants. While fixing liability as to who would pay this amount, the Tribunal observed that the driving license of driver of offending vehicle was fake and directed insurance company to make payment to third party i.e. claimants with liberty to recover the said amount from the owner and driver of offending vehicle.

2. The appellant has approached this Court stating that the Tribunal wrongly gave right to the insurance company to recover the amount from the owner. It is submitted that the owner at the time of employing the driver had seen the driving license and also taken a driving test. There was no reason with the owner to doubt the genuineness of the license. Thus, the owner exercised due diligence and did not deliberately breach or

violate the terms of insurance policy and therefore it was the insurance company which should have been held liable to pay compensation in view of the judgment in *United India Insurance Company v Lehu & Ors. JT 2003 (2) SC 595*.

3. I consider that the present appeal is not maintainable. The driver of the vehicle Shri Santosh Kumar had two licenses, one from Jharkhand Transport Authority and the other from Gauhati Authority. The insurance company got verified the genuineness of the licenses from both the authorities and sought reports from them. Both the authorities gave report that the licenses were fake. The reports were proved by the insurance company through its witness R3/W1. The Tribunal relied upon *National Insurance Company v Geeta Bhat & Ors 2008 ACJ 1498 (SC)* and held that since the driving license was fake, insurance company would be liable to pay the amount and recover the same from the owner.

4. I consider that in view of the Judgments of Supreme Court in *United Insurance Company v Davender Singh AIR 2008 SC 239* and *National Insurance Company v Geeta Bhat & Ors(supra)* insurance company is not liable to indemnify the owner in case of fake license and in case the insurance company is directed to make payment to the claimant, it has a right to recover the same from the owner. I find no force in this appeal. The appeal is hereby dismissed.

May 20, 2010
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SHIV NARAYAN DHINGRA J.