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* IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App. No.535/2010

Date of Decision: September 23, 2010

SUNIL CHAWLA Appellant
through Mr. Sidharth Luthra, Senior Advocate
with Mr. Amit Sharma, Mr. Dwapayan Gupta
& Mr. Manoj Bansal, Advocates

versus

MANJU YADAV AND ORS Respondents
through Mr. Sameer Nandwani, Advocate for
respondent No.8.

&

CM(M) No.1223/2010

SUNIL CHAWLA Petitioner
through Mr. Sidharth Luthra, Senior Advocate
with Mr. Amit Sharma, Mr. Dwapayan Gupta
& Mr. Manoj Bansal, Advocates

versus

MANJU YADAV AND ORS Respondents
through Mr. Sameer Nandwani, Advocate for
respondent No.8.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the 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'?

MACA No.535/2010 & CM(M) No.1223/2010

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REKHA SHARMA, J. (ORAL)

The appellant is the owner of the offending vehicle and he has preferred appeal bearing MAC App. No.535/2010 against the award dated April 19, 2010 in so far as it grants to the Insurance Company the right to recover from him the compensation which, at the first instance, the Insurance Company has been directed to pay to the claimants. The following facts are not in dispute:

Vide order dated September 29, 2006 the appellant was proceeded ex parte. He filed an application under Order 9 Rule 7 of the Code of Civil Procedure (hereinafter called the "Code") seeking setting aside of the ex parte order. The application so filed did not find favour with the Claims Tribunal. Hence, it was dismissed on March 17, 2007. Thereafter, on March 09, 2009 he moved another application and along with it placed on the record the driving licence of the driver of the offending vehicle issued by the Motor Licensing Authority, Nagaland. The said application also met the same fate as the application under Order 9 Rule 7 of the Code. By order dated April 09, 2010 it too was dismissed. The appellant then filed a review application but again with no success. The review application was also dismissed resulting in the passing of the award dated April 19, 2010.

Besides the present appeal, the appellant has filed CM(M) No.1223/2010 and thereby he has challenged the aforementioned two orders dated April 09, 2010 and April 19, 2010.

It is submitted by learned counsel for the Insurance Company that CM(M) No.1223 of 2010 is not maintainable, as after the passing of order dated March 17, 2007 whereby the application under Order 9

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Rule 7 of the Code was dismissed, the order dated September 29, 2006 proceeding ex parte against the appellant attained finality. It is further submitted that all further applications moved thereafter by the appellant were only to get over the limitation so as to enable him to assail the orders dated September 29, 2006 and March 17, 2007 which otherwise had become barred by time.

The learned Senior counsel for the appellant does not dispute that the appellant ought to have challenged the order dismissing his application under Order 9 Rule 7 of the Code by way of a revision or appeal before the High Court within the prescribed period of limitation. He, however, submits that notwithstanding this lapse on the part of the appellant, the Insurance Company derives the right to recover the compensation from him only after it is able to establish on the record that the driver did not possess a valid driving licence. As per the counsel, the appellant did produce a driving licence from the Licensing Authority, Nagaland, though belatedly, but the Claims Tribunal without allowing the appellant to examine an official from the concerned authority held that the driver was a resident of Haryana and as such, Nagaland Authority could not have entertained his application for issuing a driving licence. On this basis alone, the Claims Tribunal found the driving licence produced by the appellant as fake.

Having heard learned counsels for the parties, while I do feel that the appellant was negligent in attending to the proceedings before the Claims Tribunal, I cannot lose sight of the fact that he did produce a driving licence and that too before the proceedings resulting into an award had come to an end. It needs no reiteration that the Motor

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Accident Claims Tribunals are not bound by the strict Rules of evidence. In this view of the matter, once the driving licence was produced by the owner and that too before the proceedings culminated into an award, the Claims Tribunal ought to have granted an opportunity to the appellant to prove the driving licence. Hence, the Claims Tribunal erred in arriving at a finding that because the driver was a resident of Haryana, his application by Nagaland Authority could not have been entertained and consequently, the licence produced by the owner was fake. The said finding could not have been returned without examining the authority who issued the driving licence. I, therefore, feel that the Claims Tribunal needs to re-examine the issue regarding the genuineness of the driving licence.

In view of the above, the case is remanded back to the Claims Tribunal with a direction to allow the parties to lead evidence on the question of the genuineness or otherwise of the driving licence. The Tribunal is further directed to decide the issue afresh in the light of the evidence adduce before it. The matter shall be disposed of within six months from now.

The parties through counsels are directed to appear before the concerned Claims Tribunal on October 21, 2010.

The appeal and the petition are disposed of.

SEPTEMBER 23, 2010
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REKHA SHARMA, J