

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 28th November, 2011

+ **MAC APP. 26/2010**

ORIENTAL INSURANCE COMPANY LTD..... Appellant
Through: Mr. Abhishek Kumar Advocate.

Versus

JAI SINGH & ORS. Respondents
Through: Mr. Raman Kapur, Sr. Adv. with
Mr. R.P. Singh, Advocate for R-1 &
R-2.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Oriental Insurance Company impugns the award dated 25.09.2009 passed by the Tribunal whereby the compensation of ₹ 21,41,577/- was awarded in favour of the Respondents No.3 to 6 (the Claimants).
2. The Appellant's grievance is that it ought to have been granted recovery rights as driving licence held by Respondent No.1, driver of the offending vehicle was established to be fake. Learned counsel for the Appellant referred to the written statement filed on behalf of Respondents No.1 and 2 (the driver and owner of the offending vehicle). The Respondents in the written statement took the plea that at the time of the accident, the Respondent No.1 was holding a valid driving licence issued by the concerned Transport Authority Etah U.P.

and the vehicle number HR 38 E 2162 was fully insured by the Insurance Company.

3. Learned counsel for the Appellant referred to R3W2 Sanjeev Yadav's testimony wherein he stated that the licence 39896/Aligarh/96 dated 17.04.1996 was issued in the name of one Sushil Kujur son of Balashish Kujur resident of Press Colony, Aligarh. It is submitted on Appellant's behalf that perhaps this licence could not be connected to Respondent No.1 as the number on the photocopy of the licence mark A was not visible.
4. I have gone through the record. The photocopy of the licence mark A was not legally proved and, therefore, the same could not have been taken into consideration. A fresh copy is placed on record by the Appellant during the pendency of this Appeal on 15.09.2011. It is urged by the learned counsel for the Appellant that number 39896/02 is mentioned on the driving licence and thus, on the basis of R3W2's testimony it could be said that it was the same licence which was issued in the name of Sushil Kujur and not in the name of Respondent No.1. I would not agree.
5. No notice under Order 12 Rule 8 CPC issued of the driver and owner Respondents No.1 and 2 was proved on record. The Tribunal duly appreciated the evidence and held as under:-

“20. This witness R3W2 was also shown copy of driving licence Mark ‘A’ of R1 on record bearing date as 19.05.2002 which according to him was not issued by his office.

21. *The Tribunal on having considered the entire evidence as led by the insurance company has not been able to find out as to from where the insurance company has been trying to connect that driving licence with number 39896 was ever claimed to be by R1 as of him. Nor R3/Insurance Company has led any evidence to show as to on which piece of evidence insurance company is connecting R1 with this licence No.39896. Mark A shown to R3W2 does not bear this driving licence No.39896 nor insurance company has produced any evidence that R1 has ever claimed that driving licence bearing No.39896 belongs to him.*

22. *In order to show that driving licence of R1 was fake in the first instance insurance company was to prove that driving licence No.39896 was ever claimed by R1 of himself which claim on the basis of either enquiry or evidence adduced by R3/insurance company on the examination of R3W2 has been found as false. When basic evidence itself is missing the evidence of R3W2 would not be of any use and serve any purpose for the claim of the insurance company in this regard.*

23. *Moreover the insurance company has not even served R1 or R2 with any notice under Order 12 Rule 8 CPC calling upon them to produce the licence of R1. For the want to the same any amount of evidence adduced by insurance company would not be of any help to the insurance company on this point.*

24. *On consideration of the entire evidence on record, the offending vehicle since has been insured and is covering the accidental period, the liability would continue to be that of R3/insurance company only. The contention that driving licence of R1 was fake is only to be rejected being not supported by any evidence at all.*

R1 is main tortfeasor. R2 being owner is vicariously liable. R3 would indemnify the claim against R2”.

6. In my view, the Tribunal's findings that the Appellant Insurance Company failed to prove that the driving licence was fake or that there was breach of the condition of the policy so as to enable it to have a defence under Section 147 of the Motor Vehicles Act.
7. The Appeal is without any merit, the same is accordingly dismissed. No costs.

(G.P. MITTAL)
JUDGE

NOVEMBER 28, 2011

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