

UNREPORTED

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

+ FAO 692/2003 and CM No.1431/2003

NEW INDIA ASSURANCE COMPANY LTD. Appellant

Through: Mr. Pankaj Seth, Advocate

versus

LALITA YADAV & ORS. Respondents

Through: None

% Date of Decision : August 04, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 02.08.2003 passed by the Motor Accidents Claims Tribunal, Delhi in Suit No.529/97.

2. The facts relevant for the decision of the appeal are that the legal heirs of the deceased Shri Kant Yadav, who died in a motor accident, filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 against the driver, the owner and the insurer of the offending vehicle, being TSR No.DAR-302, stating therein that on 02.06.1997 when the deceased along with his son was going on a bicycle, the said vehicle No.DAR-302, being driven rashly and negligently by its driver (the respondent No.5 herein) dashed against the said cycle causing fatal injuries to the deceased. The learned Tribunal by its judgment dated 02.08.2003 passed an award in the sum of ₹ 4,89,600/- (including the interim award) with interest at the rate of 9% per annum from the date of filing of the petition till realisation in favour of the respondents No.1 to 4 and against the respondent No.5-driver, the respondent No.6-owner and the appellant-Insurance Company, and directed the appellant as the insurer of the offending vehicle to pay the entire amount of compensation to the respondents No.1 to 4. The learned Tribunal, however, did not accept the plea of the appellant-Insurance Company

that the driver was not holding a valid and effective driving licence and held that the appellant-Insurance Company was not entitled to recover the award amount from the insured.

3. Aggrieved by the aforesaid judgment and award passed by the learned Tribunal, the present appeal has been preferred by the appellant-Insurance Company challenging the same.

4. The sole submission of Mr. Pankaj Seth, the learned counsel for the appellant, is that the driver of the offending vehicle did not hold a valid and effective driving licence at the time of the accident, and consequently the owner would be deemed to have committed a breach of the conditions of the policy of insurance, and the appellant, even if held liable to pay compensation, is entitled to recover the same from the insured. It is submitted that the Tribunal has wrongly held that the appellant has failed to prove that the driver at the time of the accident did not hold a valid and effective driving licence.

5. None appeared on behalf of the respondents No.5 and 6, though respondents No.5 and 6 were duly served by publication.

Accordingly, the learned counsel for the appellant-Insurance Company was heard and the records scrutinized.

6. A look at the records shows that the only witness examined by the appellant in respect of the driving licence of the respondent No.5, the driver of the offending TSR was R3W1 Ashok Saluja, an official from the appellant-Insurance Company, who proved the copy of the insurance policy in respect of vehicle No.DAR-302 issued in the name of the respondent No.6 for the period 04.01.1997 to 03.01.1998 as Ex.R3W1/1 and stated that under the terms and conditions of the insurance policy, the vehicle could be driven by a duly licenced person. The witness further deposed that on verification of the criminal records, their company had found that the respondent No.5 Ram Bilas had also been charge-sheeted under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 for not possessing a driving licence at the time of the accident. R3W1 further deposed that the appellant-Insurance Company had sent a notice through an Advocate to the driver and the insured to produce the original driving licence and the insurance policy before the Claims Tribunal, the

postal receipts whereof were exhibited as Ex.R3W1/2 and Ex.R3W1/3 and the UPC was Ex.R3W1/4. He stated that the notice issued to the owner had been received back unserved and the returned envelope was Ex.R3W1/5. Copy of the notice was Ex.R3W1/6. In his cross-examination, R3W1 unequivocally admitted that he did not know whether the notice under Order XII Rule 8 CPC Ex.R3W1/6 had been served upon the driver.

7. From the aforesaid evidence on record, the learned Tribunal concluded, and I think rightly so, that the appellant-Insurance Company had failed to prove that the notice under Order XII Rule 8 Code of Civil Procedure for production of the driving licence of the respondent No.5-driver had been served upon the respondent No.5-driver and the respondent No.6-owner of the offending vehicle No.DAR-302. The only witness of the appellant was R3W1, who stated that the notice issued to the respondent No.6-owner had been received back unserved through returned envelope Ex.R3W1/5. As regards the driver, the witness stated that he did not know whether the notice had been served upon the driver or not. The learned Tribunal

also noted that the appellant-Insurance Company deliberately chose not to serve the aforesaid notice on the owner at the address mentioned in the insurance policy as 6/91, New Moti Nagar, New Delhi, but instead issued notice to him at 5-C-4, Railway Colony, East Punjabi Bagh, Delhi. When the notice issued at the latter address was received back unserved, no efforts were made to serve a fresh notice at the address mentioned in the insurance policy. Hence, the Tribunal held that the appellant was not entitled to recover the awarded amount from the owner.

8. There does not appear to me any plausible reason to disagree with the aforesaid findings of the learned Tribunal. There is no manner of doubt that notice under Order XII Rule 8 CPC was not served by the appellant upon the driver and the owner of the offending vehicle. The appellant also did not choose to summon the respondent No.5-driver to examine him as a witness to prove that he in fact did not hold a valid and effective driving licence on the date of the accident. Indisputably, the driver was charge-sheeted under Section 3/181 of the Motor Vehicles Act, 1988 for not possessing a

driving licence, however, the Tribunal has rightly held that this does not necessarily show that he was not holding a valid and effective driving licence at all at the time of the accident. It may be that he was not in possession of the driving licence at the time of the accident and he failed to produce the same before the police. The onus to prove that the driver was not holding a valid and effective driving licence at the time of the accident was on the appellant, which it failed to discharge. A specific query was put by me to the learned counsel for the appellant as to whether the driver had been indicted for not possessing the driving licence under Section 3/181 of the Motor Vehicles Act, 1988, but no reply to the said query could be given by the learned counsel.

9. In view of the aforesaid, the inevitable conclusion is that it must be held that the appellant has failed to prove that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and that the insured was aware of this fact. Accordingly, the appeal fails and is dismissed. CM No.1431/2003 also stands disposed of.

10. There will be no order as to costs.
11. The records of the learned Tribunal be sent back forthwith.

REVA KHETRAPAL
(JUDGE)

August 04, 2011
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