

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

+ **MAC.APP. 280/2004**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Joy Basu and
Mr. Madhurendra Kumar,
Advocates

versus

SURINDER & ORS. Respondents
Through: None

% Date of Decision : January 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

: REVA KHETRAPAL, J.

1. By way of this appeal, the appellant M/s. National Insurance Co. Ltd. seeks to impugn the award dated 2nd April, 2004 passed by the learned Motor Accident Claims Tribunal awarding a sum of ₹ 2,40,000/- with interest thereon at the rate of 9% per annum from

the date of the filing of the petition till realization to the legal representatives of Smt. Sushila, hereinafter referred to as the deceased.

2. The facts which are not in dispute are that on 19.01.2001 at about 2.45 p.m., the deceased was travelling as pillion rider on scooter No.DL-8S-M-7431, along with her husband, when the scooter was hit by the offending truck No.MP-07-B-9279, being driven in a rash and negligent manner from the back side. The deceased/pillion rider sustained fatal injuries and on a petition filed by the legal representatives under Section 166 read with Section 140 of the Motor Vehicles Act, the learned Tribunal awarded the aforesaid compensation for the untimely death of the deceased and directed the appellant – Insurance Company to pay the award amount to the claimants.

3. Aggrieved therefrom, the appellant has filed the present appeal. Notice of the filing of the appeal was issued to the claimants, being the respondents No.1 to 5 as well as the driver and owner of the offending truck, the respondents No.6 and 7 herein. None of the

respondents, however, care to contest the appeal and as a matter of fact, even before the Tribunal the driver and owner of the offending vehicle remained ex parte.

4. The principal ground for assailing the award by the appellant – Insurance Company is that the driving licence of the respondent No.6, Giri Raj was a fake one. Reliance was placed in this context by Mr. Joy Basu, the learned counsel for the appellant on the testimony of R3W2 Shri Anand Nirmal, Regional Inspector, RTO, District Agra, Uttar Pradesh, who testified that licence No.G-1553/Agra/73 had been issued for a motor cycle to one Shri Govind Prasad Goel, the copy whereof was Exhibit R3W2/A. The said driving licence had never been issued in the name of Shri Giri Raj, the driver of the offending truck.

5. On the basis of the aforesaid testimony of R3W2, Shri Anand Nirmal, Mr. Joy Basu, the learned counsel for the Insurance Company assailed the findings of the Tribunal rendered on the allegation of fake driving licence, which read as follows:-

*“On the basis of the said evidence on record
learned counsel for R3 has contended that the*

driving licence of the driver Sh. Giri Raj seized by the police photocopy of the same is Ex.R2 was not issued to him from the authority mentioned in the said driving licence as per statement of R3W2 which go to establish that Ex.R2 was a forged and fabricated driving licence and the driver Giri Raj was not having any valid and effective driving licence on the date of the accident which amounts to violation of the insurance agreement copy of which is Ex.R3W1/A and as such the insurance company is not liable to reimburse any amount of compensation on behalf of R2, which may eventually be granted to the petitioners in this case.

The Ex.R2, the photocopy of the driving licence does not mention the number of '73' as the year of driving licence nor the same is mentioned in the seizure memo Ex.R1. Thus, it is doubtful whether the driving licence Ex.R2 was issued in the year 1973. Neither the police at the time of the seizure of the driving licence have mentioned that the driving licence of the driver Giri Raj was of the year 1973. On the other hand, in the seizure memo of the DL of accused Giri Raj No.G-1553 which has been issued by Motor Vehicles Department, Agra it is mentioned that it is valid for HGV and is valid upto 7/2001. The said memo Ex.R1 nowhere mentions that the said driving licence was issued in the year 1973. From the photocopy of the Ex.R2 the year of the issue of the said licence is not clear and no efforts or steps were taken on behalf of the insurance company to produce the original before the Tribunal. However, the photocopy of the driving licence Ex.R2 mentions that the said driving licence was valid for HGV and was valid

upto the month of July, 2001. R3W2 in his cross-examination has admitted that he has not brought the record pertaining to the year of 2001. In view of the fact that the year of the issue of the driving licence is not clear and in view of the fact that in the seizure memo of the driving licence the police has not mentioned the year of the issue of the driving licence, I am of the considered opinion that R3 has miserably failed to establish that the driver Giri Raj was not having a valid and effective driving licence on the date of the accident. On the other hand, the seizure memo Ex.R1 and even the photocopy of Ex.R2 clearly depicts the said driving licence was valid upto July, 2001 and was valid for Heavy Goods Vehicles. Non-availability of an addressee at the address given is not a ground for accepting request of the postal authorities to the effect that the driver Giri Raj has refused to take the summons. In view of the said discussions, I am of the considered opinion that R3 has failed to establish that R1 was not having a valid and effective driving licence on the date of the accident and also that Ex.R2 is a forged and fabricated driving licence. Hence, R1 being the driver, R2 being the owner and R3 being the insurer of the said vehicle are held jointly and vicariously liable to pay the said awarded compensation to the petitioners. Accordingly, issue no.2 is decided in favour of the petitioners and against the respondents.”

6. Mr. Basu on behalf of the Insurance Company contended that the driver and owner not having appeared in the witness box, adverse

inference must be drawn against them. He further contended that insofar as the Insurance Company is concerned, it could not have been expected to do anything more than call for the records from the concerned licencing authority, which, it did, and the witness from the licencing authority had clearly stated in his evidence that the said licence was a fake one. The Insurance Company, therefore, had been able to discharge the onus placed upon it for proving that the driving licence was a fake one. The driver and the owner of the offending vehicle could not be allowed to hide behind the abstract of doctrine of burden of proof.

7. I am unable to agree with the aforesaid contention of Mr. Basu for the reason that in my view, the Insurance Company has miserably failed to discharge the onus placed upon it of proving that the driving licence of the respondent No.6 driver was a fake one. R3W1, the official from the Insurance Company, had himself placed on record the certified copy of the seizure memo of the driving licence of the driver Giri Raj prepared by the police as Exhibit R1 and the photocopy of the driving licence seized by the police as Exhibit R2.

A bare glance at the seizure memo of the driving licence Exhibit R1 shows that the driving licence number was No.G-1553 and the said driving licence had been issued by the Motor Vehicles Department, Agra for driving HGV and was valid till July, 2001. The certified copy of the driving licence, Exhibit R2 also shows that the driving licence was for driving a Heavy Motor Vehicle and was valid till July, 2001. The date of issue is, however, not clear. The number of “73” as the year of issue of the driving licence is neither mentioned in seizure memo Exhibit R1 nor in the driving licence Exhibit R2. In view of the fact that R3W2, the official from the Transport Authority from Agra was called upon to produce the record of the year 1973, for no good reason at all, and in view of the fact that R3W2 in his cross-examination admitted that he had not brought the record pertaining to the year 2001, the Tribunal rightly refused to believe that the driving licence of Giri Raj was a fake one.

8. The only other ground on which the award has been assailed is the quantum of compensation awarded by the learned Tribunal. For the purpose of calculating the compensation, the learned Tribunal has

taken the notional income of the deceased to be in the sum of ₹ 15,000/- and after applying the dicta laid down in the case of *Smt. Sarla Dixit and Anr. vs. Balwant Yadav and Ors., (1996) 3 SCC 179*, the annual average income of the deceased has been assessed to be ₹ 22,500/-. Deducting 1/3rd therefrom and applying the multiplier of 17 in consonance with the age of the deceased, who was undisputedly 34 years of age, the total loss of dependency has been assessed to be ₹ 2,55,000/-. After adding the non-pecuniary damages and subtracting the amount of interim award granted to the claimants, the claimants have been held to be entitled to a net compensation of ₹ 2,40,000/- on account of the death of the deceased in the said accident. Since the accident took place in the year 2001, interest at the rate of 9% has been granted from the date of the filing of the petition till the date of realization of the award amount.

9. Mr. Basu does not dispute the income of the deceased, but states that the multiplier of 16 should have been applied instead of the multiplier of 17. In this context, he relies upon the judgment rendered by the Hon'ble Supreme Court in the case of *Smt. Sarla Verma and*

Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121,
wherein the multiplier for the age group of 31 – 35 years is set out as 16 instead of 17, which is the multiplier applicable in accordance with the Second Schedule to the Motor Vehicles Act.

10. Accordingly, the award is modified to the extent that to the multiplicand constituting the annual average loss of dependency, the multiplier of 16 is being applied. Thus calculated, the figure of the total loss of dependency of the respondents No.1 to 5 works out to ₹ 2,40,000/- and after adding the non-pecuniary damages and subtracting the amount of interim award granted to the claimants, the claimants are held entitled to a net compensation of ₹ 2,25,000/- on account of the death of the deceased in the said accident.

The appeal stands disposed of accordingly.

**REVA KHETRAPAL
(JUDGE)**

January 04, 2011
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