

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

Reserved on: 21st November, 2011
Pronounced on: 23rd November, 2011

+ **MAC APP. 185/2008**

MOHAN LAL KANOJIA Appellant

Through: Mr. Rajeev Saxena Advocate
Mr. Rajat Mittal, Advocate.

Versus

S.K. JAIN & ANR. Respondents

Through: Mr. J.P. N. Shahi Advocate for
R-2/OIC.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G. P. MITTAL, J.

1. Appellant Mohan Lal Kanojia challenges the award dated 13.04.2007 passed by the Motor Accident Claims Tribunal (the Tribunal) granting compensation of ₹ 11,9,279/- whereby the Respondent No.2 The Oriental Insurance Company Limited was directed to make payment of the awarded compensation with a

right to recover the same from the Appellant who was the owner of the offending Bus No. DL-IP-5284 on the ground that the driver did not hold a valid and effective driving license at the time of the accident.

2. During the pendency of the Appeal an Affidavit was filed by the Appellant stating that the driving license bearing No.C970205511 was issued by Anand Vihar Transport Authority and that the fact had been verified by the Transport Department in response of the RTI application filed by the Appellant. A photocopy of the driving license was also placed on record.
3. In the Counter Affidavit filed by the Insurance Company, it was stated that the license was verified from the Licensing Authority Mayur Vihar (and not from the Licensing Authority Anand Vihar). It was not disputed by the learned counsel for Respondent No.2 Insurance Company that the particulars given concluded that the licence issued by the Anand Vihar Transport Authority was a genuine. It is, however, urged by the learned counsel for Respondent No.2 that negligence on the part of the driver was not established as the FIR No.165/1998 of Police Station Tilak Marg was sent as untraced.
4. The Tribunal referred to and relied upon PW-7's testimony (examined before the Tribunal) to arrive at the conclusion that there was negligence on the part of the bus driver.

5. PW-7 stood the test of cross-examination. His testimony regarding negligence of the driver of the bus was not disputed in cross-examination. Thus, the negligence on driver's part was established. I do not find any reason to set aside the said findings.
6. It is urged by the learned counsel for Respondent No.2 that though the genuineness of the driving licence has now been proved, yet the owner failed to prove the validity of the bus's permit. Thus, the impugned award could not be interfered with.
7. Respondent No.2 contested the Claim Petition before the Tribunal by filing written statement but did not take up the plea that the owner did not have a valid permit to drive the bus on the route on the date of the accident. This plea is not available to Respondent No.2. It is settled that the onus is on the Insurance Company to prove that there is breach of terms of the policy. The Insurance Company has failed to do so and a mere argument during hearing of the Appeal is of no consequence.
8. Since the driver of the offending bus did possess a valid and effective driving license, the Insurance Company was under obligation to indemnify the Appellant being owner of the bus.
9. The Appeal is allowed and the impugned award is modified to the extent that the Respondent No.2 Insurance Company shall not be entitled to recover the compensation from the Appellant i.e. owner of the bus.

10. The appeal is disposed of in above terms. No costs.
11. Copy of the order may be sent to the trial court for information and compliance.

(G.P. MITTAL)
JUDGE

NOVEMBER 23, 2011
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