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

+ **MAC.APP. 285/2011**

RAJ KUMAR

..... Appellant

Through: Mr. Navneet Goyal, Advocate.

versus

UNITED INDIA INSURANCE CO. LTD.

AND OTHERS

..... Respondents

Through: Mr. K.L. Nandwani, Advocate.

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Date of Decision : April 19, 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?

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. This is an appeal filed by the owner of the truck, which was allegedly involved in a road accident on 19.08.2009, which resulted in the death of Sh. Trivendra Nath. A claim petition seeking compensation was filed by the legal representatives of the deceased/respondents Nos. 3 to 7 herein which was registered as

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suit No. 349/2009, alleging that the accident was caused due to the rash and negligent driving of the truck owned by the appellant. The respondent No.1 herein is the insurer of the truck and the respondent No.2 is the driver thereof.

2. During the proceedings before the learned Tribunal, written statement was filed by the respondent No.1, the insurer of the truck wherein the usual pleas, including the plea that the Insurance Company had no liability on account of driving licence, were taken. However, no copy of the verification report of the driving licence or the insurance policy were filed with the written statement. Issues were framed by the learned Tribunal and on 12.10.2010, the evidence of the claimants/respondents Nos. 3 to 7 herein was closed and the case was fixed for respondents' evidence for 09.11.2010. On the said date, no witness was examined either by the appellant or by the respondent No.1/Insurance Company and the case was adjourned to 29.11.2010 while giving one more opportunity for leading the respondents' evidence. On the said date i.e. 29.11.2010, no witness was present from the side of the respondents, i.e., the appellant and the respondents Nos. 1 and 2 herein, hence, the respondents' evidence was closed by the learned

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Tribunal and the case was fixed for final arguments for 30.11.2010.

3. The case of the appellant – owner is that on 30.11.2010, arguments were addressed by the counsel for the appellant and the case was kept for orders/judgment. However, in the later part of the same day, the learned Tribunal adjourned the case to 14.12.2010 but the purpose was not brought to the notice of the counsel for the appellant and the counsel remained under the impression that the case had been adjourned for judgment/orders. On the said date, i.e., 14.12.2010 (wrongly recorded as 13.12.2010 in the order-sheet of the learned Tribunal), the appellant enquired about the judgment and was informed that the judgment had not been pronounced. Subsequently, the appellant came to know that the judgment had been pronounced on 24.12.2010. After going through the same, it was revealed that the learned Tribunal had granted recovery rights to the Insurance Company (the respondent No.1 herein) against the appellant and that in fact on 14.12.2010 (in the order-sheet, the date is 13.12.2010), the learned Tribunal had examined a witness on behalf of the Insurance Company/the respondent No.1 herein, after closing the evidence of the respondent on 29.11.2010 without

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re-opening the evidence and without permitting the Insurance Company to lead evidence once the evidence was closed. The said witness of the Insurance Company was examined by the Tribunal after the appellant was proceeded ex-parte on 14.12.2010. The witness examined on the aforesaid date is an official of the Insurance Company, who placed on record the report of some investigator with regard to the driving licence of the driver of the appellant/owner pertaining to the year 2003 purported to have been procured from the Dehradun Transport Authority.

4. It is further the case of the appellant that the accident occurred on 19.08.2009 on which date the respondent No.2, the driver of the appellant was holding a valid driving licence duly issued from the Transport Authority, Patna, Bihar vide serial no.76/97 authorizing him to drive heavy motor vehicle. The appellant also took the trial test of respondent No.2/driver before employing him as driver, and the respondent No.2 when employed by the appellant had given a copy of his aforesaid driving licence which appeared to be genuine and was having valid endorsement on his driving licence for the period from 9.7.2008 to 8.7.2011. The said driving licence was subsequently got verified by the appellant from the concerned

Transport Authority at Patna, Bihar. The verification report shows that the said driving licence was valid for the periods intervening 11.07.2001 to 10.07.2004, 9.7.2005 to 8.7.2008 and thereafter for the period 9.7.2008 to 8.7.2011 and had been issued from the office of the District Transport Office (DTO), Patna, Bihar. A copy of the driving licence of the respondent No.2 and the verification report issued by the DTO, Patna, Bihar has been filed by the appellant alongwith the appeal.

5. The appellant's grievance is that the learned Tribunal on 24.12.2010 while deciding the claim petition erred in holding that since no driving licence was produced by the driver and owner, the respondent No.1/the insurer was entitled to recovery rights qua the appellant in respect of the total compensation amount of ₹ 24,80,300/- with interest at the rate of 7.5% per annum awarded in favour of the claimants/respondents No.3 to 7.
6. Mr. Navneet Goyal, the learned counsel for the appellant contended that the impugned order deserves to be set aside for the reason that the Insurance Company was permitted to lead evidence without seeking permission to lead evidence after closure of its evidence by the learned Tribunal. A reversal of the order closing

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the evidence of the respondents could not have been allowed by the learned Tribunal without notice to the appellant. The grant of recovery rights in the circumstances in favour of the Insurance Company and against the appellant – owner was not justified as the appellant remained under the impression that after the closure of the respondents' evidence on 29.11.2010, no evidence had been adduced by the Insurance Company. In any case, the evidence of the Insurance Company could not have been taken into account without affording opportunity to the appellant to cross-examine the witness of the Insurance Company and to lead evidence in rebuttal.

7. Mr. K.L. Nandwani, the learned counsel for the respondents, on the other hand, sought to support the award passed by the Insurance Company but did not deny, as indeed he could not have, that the evidence of the witness of the Insurance Company was recorded without affording an opportunity to the appellant to cross-examine the witness of the Insurance Company and to lead evidence in rebuttal.

8. The records of the learned Tribunal were requisitioned by this Court, which clearly show that no application was filed by the Insurance Company for the re-opening of the evidence nor any

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notice was issued to the appellant/owner *suo motu* by the Tribunal and, thus, the evidence of the Insurance Company was undeniably recorded behind the back of the appellant. This, in my view, militates against all principles of natural justice. Once, the evidence of the respondents was closed and the case listed for arguments, the learned Tribunal, in my view, before re-opening the evidence of one of the respondents in the case, ought to have insisted upon the Insurance Company moving a formal application for the re-opening of the evidence. Alternatively, the presence of the appellant's counsel should have been ensured by issuance of notice to him so as to enable him to cross-examine the witness of the Insurance Company, more so, as the evidence of the Insurance Company in this case was designed to obtain recovery rights to the Insurance Company qua the appellant, the owner of the offending truck.

9. In the aforesaid view of the matter, I have not the least bit of hesitation in setting aside the award dated 24.12.2010 to the extent of the grant of recovery rights to the Insurance Company and to remand back the matter to the learned Tribunal with the direction to afford an opportunity to the appellant to cross-examine the

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witness of the Insurance Company, already examined by the Insurance Company, and to lead evidence in rebuttal.

10. Records be sent back to the learned Tribunal for the aforesaid purpose. The learned Tribunal shall, after recording the evidence of the Insurance Company and the rebuttal evidence adduced by the appellant, adjudicate afresh on the aspect as to whether or not the Insurance Company is entitled to the grant of recovery rights against the appellant.

11. The appeal stands disposed of accordingly. Parties are directed to appear before the learned Tribunal on 30th May, 2011.

Reva Khetrpal
REVA KHETRAPAL
(JUDGE)

April 19, 2011
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4535/13 for Refund
of Statutory Amt i.e. Rs. 25000/-*