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IN THE HIGH COURT OF DELHI AT NEW DELHI

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MAC. APP. No.366 of 2006

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RESERVED ON: 19th August, 2011

PRONOUNCED On:30th September, 2011

NAND KISHOR

. . . APPELLANT

Though: Mr. S.P. Jha, Advocate with
Mr. Vikrant Bharadwaj,
Advocate.

VERSUS

AMIT WALIYA & ORS.

. . .RESPONDENTS

Through: Mr. Surender Chauhan,
Advocate with Mr. Anand
Kumar Sharma, Advocate for
Respondent No.1.

Mr. Manoj Ranjan Sinha,
Advocate for Respondent
No.2.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The claimants who filed the petition before the Motor Accident Claim Tribunal ('the Tribunal' for brevity) under Sections 166 and 144 of the Motor Vehicle Act (hereinafter referred to as 'the Act') for claiming compensation on account of death of Raj

Kumar Jolly (deceased) in a road accident which took place on 20th January, 2001 at about 8.30 P.M. The deceased was walking on foot to the Saturday Market to purchase vegetables. When he reached near Kakkar Property Dealer and was on the road in front of park near house No.BE-374/A, Hari Nagar, he was knocked down by a scooter No.DDR 1756, which was driven by one Amit Waliya (minor driver). It is not in dispute that Amit Waliya was a minor and was not holding any driving license. The case of the claimants was that the minor driver was driving the offending vehicle at a high speed recklessly and negligently, which hit the deceased with a great force because of which the deceased suffered fatal injuries and died. The claimants had impleaded the minor driver as the respondent No.1. The appellant herein, who was the owner of the said two-wheeler scooter and National Insurance Company with which it was insured as the respondent No. 2 & 3 respectively.

2. It has been conclusively established and proved before the Tribunal, on the basis of evidence on record, that the deceased received fatal injuries and died on account of rash and negligent driving of scooter in question, which was driven by the minor driver. Compensation of ₹12,80,000, on that basis is awarded to the four claimants, viz. widow of the deceased and three children of the deceased. The findings of the learned

Tribunal on the aforesaid aspect including on the amount of compensation are not under challenge in this appeal and therefore, it is not necessary to state the same in detail. In this appeal, we are concerned with altogether different question. While awarding the compensation in favour of the claimants and directing the insurance company to pay the same in the first instance, the insurance company has been given right to recover the said amount from the appellant herein. The appellant is aggrieved by this direction of the Tribunal permitting the insurance company, the amount recovered from him. As we are concerned with this limited issue, only those facts which are necessary to determine this question in the instant appeal have been mentioned.

3. The reason given by the Tribunal in support of the aforesaid view taken by it is that the minor driver was not having any driving license and it has been established that he was driving the offending vehicle which belonged to the appellant herein. The Tribunal has further stated that it was not the case of the appellant that he had never authorized the minor driver to drive the offending vehicle. This led the Tribunal to conclude that the appellant violated the terms and conditions of the insurance company by authorizing a minor driver to drive his vehicle without holding a proper and valid license and

therefore, insurance company cannot be liable to be held to pay the compensation under the terms and conditions of the policy, following the judgment of the Supreme Court in the case of ***United Insurance Company Ltd. Vs. Swarn Singh & Ors.***[2004 (3) SCC 297].

4. Challenging the aforesaid findings of the learned Tribunal, the learned counsel for the appellant submitted that before the Tribunal, the appellant took up the defence that his son was not involved in the accident. Alternate plea was taken that the appellant had not given any consent or permission to the minor to drive the said vehicle. The said minor driver was a stranger to him and there was neither express nor implied any permission was granted to him to drive the scooter. It was also the defence that since the scooter in question was insured with the insurance company and the policy was valid even on the date of accident, it was the insurance company which was to bear the liability. It was, thus, argued that there was no violation of the terms and conditions of the insurance company and no liability could be fastened to the appellant. Learned counsel for the appellant referred to the following judgments in support of his submission:

- (i) ***National Insurance Company Ltd. Vs. Swarn Singh & Ors.*** [2004 (3) SCC 297];

- (ii) ***United India Insurance Company Ltd. Vs. Lehu & Ors.*** [(2004) 3 SCC 297];
- (iii) ***Suresh Mohan Chopra Vs. Laxhi Prabhu Dayal and Ors.*** [1990 (Supp.) SCC 696];
- (iv) ***V. Mepherson and Anr. Vs. Shiv Charan Singh & Ors.*** [1998 (ACJ) (Delhi) 601].

5. It was argued that in all the aforesaid judgments, consistent view taken by the Courts was that it is the legal and contractual obligation of the insurance company to pay the claim of compensation arising in case of accident and this liability can be repudiated by the insurance company only in a case of exception and such an order is to be passed only in cases when there is a proven breach of terms and conditions of insurance policy committed by the insured. It was argued that in the present case, the appellant had denied his liability and involvement of his scooter in accident. However, the insurance company had not even suggested that there was any violation of the terms and conditions of the insurance policy. No such question was put in the cross-examination of the appellant. Therefore, it was never the case of the insurance company that the appellant had committed any breach of the insurance policy as prescribed under Section 149(2) of the Act. In absence of such a plea and for want of cross-examination of the minor driver, the insurance company could not be allowed to recover the amount from the appellant.

6. The learned counsel for the insurance company, on the other hand, relied upon the reasons given by the Tribunal and submitted that the factual position established on record was sufficient to hold that there was a breach and violation of terms and conditions of the policy by the appellant and legal consequences thereon had to ensue.
7. I have considered the submissions of the learned counsel for both the parties. The principle of law which is culled out from the judgments relied upon by the learned counsel for the appellant and stated in his argument is beyond any pale of doubt. It does not require any emphasis to state that once the vehicle is insured, the insurer is indemnified for the loss or payment of compensation from the third party as a result of accident in which the insurer is involved. Liability is assumed by the insurance company in such circumstance and therefore, it becomes obligation of the insurance company to pay the claim to the victim of the accident. It is also not in dispute that the payment of compensation by the insurance company is a rule and denial of the same and right to recover from the said insurance company is exception. This exception comes into play only when there is a breach of terms and conditions of the insurance policy by the insurer.

8. The moot question is as to whether in the instant case, such a violation is committed by the appellant. It is not in dispute that as per the terms of the insurance policy, it was incumbent that the insured vehicle is driven by a person holding valid license. In the instant case, it is not in dispute that the offending vehicle was driven by a minor who was not holding any license. Therefore, this aspect is duly proved on record.
9. In the backdrop, the only aspect which needs to be examined is as to whether the appellant had authorized the said minor to drive the vehicle. To ascertain this defence put up by the appellant as well as the minor driver becomes very material. Curiously, the defence of the minor driver was that of complete denial viz he was not even driving the vehicle at all on the date of accident at any time and he had been dragged into the said case with *mala fide* intentions and ulterior motives. This defence of the said minor ultimately turned out to be false. During the cross-examination, he admitted that he was arrested in the said accident. He also admitted that he was not having any driving license. The Police, after investigation, had even filed the Challan under Section 3/181 of the Act, as per which minor driver was driving the offending vehicle. Therefore, what has been proved on record is not only that the vehicle was driven by Amit Waliya, a minor, the

vehicle involved in the accident was this very scooter which belonged to the appellant.

10. With this, let me point out the defence which was taken by the appellant in the written submission filed by him before the Tribunal. The stand of the appellant was also that of the complete denial of the involvement of scooter in the accident. He had only stated that scooter No. DDR 1756, which concededly belonged to the appellant was not involved in the alleged accident on 20th January, 2001. He had stated that the accident was not caused by that scooter. He had further stated that scooter was not being driven by the minor driver and therefore, he was not vicariously liable to pay the compensation amount. No plea whatsoever was taken by the appellant that he had not authorized the minor driver to drive the vehicle. Once the defence of the appellant, viz., vehicle in question was not involved in the accident and the said vehicle was not driven by Amit Waliya, the minor driver has been proved to be false and it has been proved that his scooter was involved in the accident, which was driven by a minor who was not holding a valid license, no further proof was required to arrive at a finding that there was a violation of the terms and conditions of the insurance policy. In the aforesaid factual backdrop, if the appellant wanted to allege that he had not

authorized the minor driver to drive his vehicle, it was for him to specifically take such a plea. However, instead of taking this plea, the appellant took a calculated risk by putting forth a false defence, viz., that the scooter was not involved in an accident and it was not even driven by a minor driver at the time of accident. When scooter belonged to the appellant, who was the owner thereof, under what circumstance, it came into possession of the minor driver who was driving the said scooter at the time of accident had to be stated by the appellant. No plea was raised by him that this scooter was unauthorisedly taken away by the said minor. No case was pleaded that the appellant had made any complaints to the police officials in this behalf. If the appellant wanted to state that his scooter had been stolen by the minor driver or was unauthorisedly removed, which was a feigned suggestion moved at the time of arguments it was for him to plead and prove the same.

11. I, thus, find no merit in this appeal, which is accordingly dismissed.

12. No costs.

(A.K. SIKRI)
JUDGE

SEPTEMBER 30, 2011

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