

UNREPORTED

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

+ **MAC. APP. 351/2009 and CM No.10055/2009**

GURMESH SINGH

..... Appellant

Through: Mr. Rajat Aneja with
Ms. Vidhi Jain, Advocates.

versus

LATA GUPTA AND ORS.

..... Respondents

Through: Mr. L.K. Tyagi, Advocate for
the respondent No.6

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Date of Decision : July 25, 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. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the *ex parte* award dated 06.02.2008 passed by the

Motor Accidents Claims Tribunal, Rohini Courts, Delhi, whereby compensation in the sum of ₹ 15,36,754/- was awarded to the respondents No.1 to 4 along with interest thereon and the order dated 02.07.2009 passed by the said Tribunal whereby the application filed by the appellant under Order IX Rule 13 of the Code of Civil Procedure for setting aside the said *ex parte* award was dismissed.

2. The facts in a nutshell are that on 01.01.2006, one Jitender Gupta met with a road accident sustaining grievous injuries, to which he succumbed on 05.01.2006. The respondents No.1 to 4, being his legal heirs, filed a Claim Petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 for grant of compensation. Pursuant to the filing of the said Claim Petition, notices were directed to be issued to the driver, the owner and the Insurance Company of the alleged offending vehicle. The Insurance Company, namely, M/s. National Insurance Co. Ltd., which is arrayed as the respondent No.6 in the present appeal, filed a written statement denying its liability to pay compensation to the claimants. In the said written statement, a number of preliminary objections and pleas in defence were raised

including *inter-alia* a vague plea that in the absence of any information from the insured and in view of the non-supply of driving licence by the respondents, the Claim Petition filed by the claimants was liable to be dismissed.

3. It is the case of the appellant, who is the owner of the vehicle involved in the accident that on receipt of the notice of the filing of the Claim Petition he met the officials of the Insurance Company who assured him that he would not be required to bother about the Claim Petition filed by the claimants as his vehicle was fully insured. In these circumstances, although he (the appellant) was served in the said Claim Petition and appeared before the learned Tribunal on 22.02.2006, he did not appear thereafter in view of the specific assurances given to him on behalf of the Insurance Company. The appellant/owner as well as the driver were accordingly proceeded *ex parte* by the learned Tribunal on 26.04.06, whereafter the Tribunal proceeded to record the evidence of the claimants and the evidence adduced by the Insurance Company.

4. After the conclusion of the evidence of the parties, the learned Tribunal passed a detailed award on 06.02.2008, wherein it gave a finding to the effect that the driving licence of the driver, namely, the respondent No.5 herein, was fake and thus, the respondent No.6- Insurance Company would pay the award amount to the claimants in the first instance but would be entitled to recover the same from the owner/appellant herein. The appellant contends that it was only when the officials of the office of the concerned Collectorate came to his premises on 5.11.08 for recovery of the awarded amount that he became aware of the fact that he had been saddled with the liability to reimburse the Insurance Company for the compensation paid by it to the legal representatives of the deceased. Accordingly, he immediately proceeded to engage a counsel, who filed an appeal under Section 173 of the Motor Vehicles Act, 1988 on 28.11.2008, being MAC. APP. No.611/2008 titled ***“Gurmesh Singh vs. Lata Gupta and Ors.”***, which came up for hearing before this Court on 09.02.2009, and after hearing brief submissions on behalf of the appellant, this Court was of the view that the appellant should first

impugn the *ex parte* award dated 06.02.2008 before the learned Tribunal by moving an application under Order IX Rule 13 CPC. Liberty was granted to the appellant to file such an application before the learned Tribunal and with these observations the appeal was dismissed as withdrawn. Resultantly, the appellant filed an application under Order IX Rule 13 CPC before the learned Motor Accidents Claims Tribunal, Rohini Courts, Delhi, which, however, was dismissed by the Claims Tribunal by its impugned order dated 02.07.2009 primarily on the ground that the appellant had not been vigilant in looking after his interest and the ground taken by the appellant was nothing but a lame excuse put forward by him to avoid the liability of payment of the awarded amount. Aggrieved by the aforesaid, the present appeal has been preferred for setting aside the *ex parte* award dated 06.02.2008 and the order dated 02.07.2009 dismissing the application of the appellant under Order IX Rule 13 CPC.

5. Mr. Rajat Aneja, the learned counsel for the appellant has contended that the learned Tribunal while passing the impugned

orders did not take into consideration the fact that the appellant, being the owner of the vehicle, was under a *bonafide* belief that since his vehicle was insured with the respondent No.6 herein, the principal liability to pay compensation would be of the Insurance Company. The appellant thus did not appear after 22.02.2006, when he had entered appearance only to be re-assured by Shri Naveen Gupta, the counsel for the Insurance Company, who had informed him that the only issue which was required to be considered by the Tribunal was whether there was a valid insurance policy. Mr. Aneja further contended that the circumstances thus warranted the setting aside of the *ex parte* award so as to afford an opportunity to the appellant to adduce evidence to the effect that he was not aware that the licence of the driver engaged by him was a fake one and that he (the appellant) had engaged the driver in good faith, after examining the driving licence of the driver which appeared to be genuine on the face of it and after ensuring that the said driver was competent to drive the vehicle. Mr. Aneja also contended that the denial by the learned Tribunal to afford an opportunity to the appellant to defend his case

had resulted in serious civil consequences to the appellant, who had been fastened with a huge liability of more than ₹ 18 lakhs. He stated that the appellant is a Government servant having retired as a Gazetted Officer from the National Technical Research Organisation on 30.04.2009 and has no means to pay such a huge amount at the fag end of his life. He submitted that there was no wilful breach of the terms of the insurance policy on the part of the appellant, and as such the insurer could not seek to recover the award amount from the insured.

6. Reliance was placed by the learned counsel for the appellant on a large number of decisions, including those rendered by the Supreme Court in the following cases:

- (i) *United India Insurance Co. Ltd. vs. Lehu and Ors., (2003) 3 SCC 338;*
- (ii) *Skandia Insurance Co. Ltd. vs. Kokilaben Chandravan and Ors., (1987) 2 SCC 654;*
- (iii) *Sohan Lal Passi vs. P. Sesh Reddy and Ors., (1996) 5 SCC 21;*

- (iv) *New India Insurance Co., Shimla vs. Kamla and Ors. Etc. Etc., (2001) 4 SCC 342;*
- (v) *National Insurance Co. Ltd. vs. Swaran Singh and Ors., (2004) 3 SCC 297;* and
- (vi) *Premkumari and Ors. vs. Prahlad Dev and Ors., AIR 2008 SC 1073.*

7. Mr. L.K. Tyagi, the learned counsel for the respondent No.6-Insurance Company, on the other hand, sought to support the impugned orders dismissing the application of the appellant under Order IX Rule 13 CPC and the *ex parte* award holding that the appellant-owner had failed to exercise reasonable care and diligence and was, therefore, responsible for the payment of compensation to the claimants. He relied upon the unreported judgment of this Court in FAO 589/2002 titled “*Subhash Jindal vs. Asha Kumar and Ors.*” decided on October 21, 2005.

8. Having considered the rival contentions of the parties and gone through the precedents cited at the bar, I am of the view that the learned Tribunal ought to have afforded at least one opportunity to the

appellant herein to adduce his evidence, more so, as the appellant had filed an appeal against the *ex parte* judgment dated 06.02.2008, being MAC. APP. No.611/2008, which was allowed to be withdrawn by this Court with liberty to the appellant to file an application under Order IX Rule 13 of the Code of Civil Procedure within 30 days of the date of withdrawal. I also find from the record that though the respondent No.6-Insurance Company in its written statement filed before the Claims Tribunal categorically stated that it did not have the driving licence of the driver, yet it proceeded thereafter to adduce evidence to the effect that the driving licence was a fake one even without issuance of notice under Order XII Rule 8 CPC to the appellant-owner and the respondent No.5-driver to produce the said driving licence.

9. In view of the aforesaid, the order dated 2nd July, 2009 dismissing the application of the appellant under Order IX Rule 13 CPC is set aside subject to payment of ₹ 10,000/- as costs. The necessary corollary is that the *ex parte* award dated 06.02.2008 is also set aside with the direction that the Tribunal, at its discretion, shall

award reasonable opportunity to the appellant to adduce his evidence. If, however, the appellant refuses to avail of the said opportunity, the Tribunal shall proceed to dispose of the matter in accordance with law.

10. The appeal is allowed in the above terms. CM No.10055/2009 also stands disposed of. The records be sent back to the Tribunal forthwith alongwith a copy of this order. The parties are directed to appear before the learned Tribunal on 23.08.2011 for fixing of a date for evidence and directions with regard to the summoning of witnesses.

**REVA KHETRAPAL
(JUDGE)**

July 25, 2011
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