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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th September, 2012

+ **MAC. APP. No.187/2010**

SHIVRAJ

..... Appellant

Through: Mr. M.L. Sharma, Advocate

Versus

MALPU @ MALAKWA & ORS. Respondents

Through: Mr. Dharmesh Kumar with Mr. Sushil Kumar, Advocate for the Respondents No.1 & 2.

Mr. A.C.Mittal, Advocate for the Respondent No.4 Insurance Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Shivraj who is the owner of the offending vehicle delivery van No.DL-1LH-1817 impugns the judgment dated 11.01.2010 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) solely on the ground that the driver of the vehicle (Respondent No.3 Ram Kumar) possessed a valid driving licence on the date of the accident, that is, 09.03.2008. Thus, the Claims Tribunal fell into error in exonerating the Insurance Company and fastening liability on him and the driver of the vehicle.
2. There is no Appeal by the Claimants on the issue of liability.

3. The learned counsel for the Appellant has produced the original licence at the time of the hearing, copy of which is also on page 31 of the paper book. He submits that this licence was issued on 16.03.1987 and it shows that the same was valid upto 07.05.2012.
4. The Claims Tribunal dealt with the issue of liability as under:

“23. Ld. counsel for insurer argued that the driver of the vehicle in question was not having any valid or effective driving licence as on the date of accident, so the insured, the vehicle owner had committed breach of terms and condition of the policy of the vehicle in question and insurer was not liable to pay compensation sum.

24. R3W2 Sh. Pawan Kumar, LDC from Janak Puri Transport Authority testified and proved the computerized record of driving licence No.P04032008559280 of respondent No.1 in two sheets as Ex. R3W2/A(colly.). Said licence was issued on 18/03/08 i.e. 9 days later to the accident. R3W2 also proved the computerized record of driving licence No.DL0419870034237 in the name of Sh. R. K. Mishra, running into three sheets, Ex. R3W2/B(colly.). R3W2 testified that the said licence had expired on 21/09/04 but was renewed on 08/05/09, while in the period from 22/09/04 upto 07/05/09, the said licence was not got renewed. So as on 09/03/08, the said licence was not valid as it stood previously expired.

25. This is a case where the respondent No.1, the driver had got issued two driving licences. As per own written submissions of respondent No.1 filed on 27/10/09, he was holder of two driving licences afore stated. Respondent No.1 took the plea that licence No. DL0419870034237 was got issued for running commercial vehicle while the other licence No.P04032008559280 was for driving of light motor vehicle for which his application for private driving licence was pending with the concerned authority earlier and was issued to him on 18/03/08 after the fulfillment of the prescribed requirement.

26. R2W1, the vehicle owner in his affidavit stated that on 24/06/06, one Sh. Ram Kumar, the respondent No.1 approached him for employment as a Driver and handed him over driving licence No. DL0419870034237(C) which was valid from 16/03/1987 to 07/05/2012 for M. CYL, 3W-TSR vehicle, Ex. RW2/1 and accordingly he was asked to drive Delivery Van which he did to the satisfaction of respondent No.2, so respondent No.1 was employed as employee and was told to get his licence verified from the concerned authority and the verification report handed over to respondent No.2 was as Ex. RW2/2. The versions of respondents No.1 & 2 has been proved wrong by the testimony of R3W2 and the record produced and proved by him aforesaid. Ex. R3W2/B(colly) depicts of driving licence No. DL0419870034237 having expired on 21/09/04 which was renewed on 08/05/09. As per testimony of R3W2, said licence was not got renewed in the period from 22/09/04 upto 07/05/09. There is absolutely no question nor any occasion for respondent No.2 to have seen the driving licence whose copy is Ex. RW2/1 alleged to have been shown by respondent No.1 on 24/06/06, since it was renewed on 08/05/09 and not before. Even Ex. RW2/2, the extract of the driving licence issued by the licencing authority is of date 14/09/09 and not of any date of year 2006. Falsity in testimony of respondent No.2 is apparent on the face of record, so as to escape liability.

27. It is borne of record and proved by respondent No.3, insurer that on 09/03/08, on the date of accident, respondent No.1 was not holding any valid or effective driving licence to drive the vehicle in question, since his driving licence stood previously expired on 21/09/04, as per Ex. R3W2/B.

28. R3W1 has proved the insurance policy Ex. R3W1/5 as well as the notice u/o 12 R 8 CPC, Ex. R3W1/1 sent vide postal receipt, Ex. R3W1/2, Ex. R3W1/2A and Ex. R3W1/3 to the respondents No.1 & 2 for production of valid driving licence of respondent No.1 as on the date of accident. Since respondent No.1 was not holding any valid driving licence as on the date of accident and respondent No.2 permitted respondent No.1 to drive his vehicle without any valid driving licence, in terms of law laid in the cases of (1)Malla

Prakasarao v. Malla Janaki & Ors, reported in (2004)3 Supreme Court Cases 343 and (2) Sardari & Ors v. Sushil Kumar & ors, reported in 2008(2) CCC 13(SC), insurer is not liable to pay compensation. In terms thereof, the tortfeasors viz., respondents No.1 & 2 being the driver and the owner of the offending vehicle are liable to pay compensation sum to the claimants. Even insurer is entitled and is so granted the recovery rights to recover the interim compensation sum with interest at same rate from the date of payment till realization from the respondents No.1 & 2 jointly and severally.”

5. The original licence produced by the learned counsel for the Appellant for the perusal of the Court shows that the same was issued on 16.03.1987 and it was valid from 08.05.2009 to 07.05.2012. Since, it was the Appellant's plea that the licence was valid throughout from 16.03.1987 till 07.05.2012, this Court summoned the concerned MLO(Mr. P.S. Panchpal) from West Zone-I, Janakpuri. He deposed as under:

“...Initially, the licence was valid for a period of three years w.e.f. 16.03.1987. It was renewed on 22.09.2001 upto 21.09.2004 and thereafter the licence was renewed on 08.05.2009 upto 07.05.2012. This licence was not renewed for the period 22.09.2004 to 07.05.2009. The transport licence is valid only for a period of three years, whereas a non-transport licence is valid for a maximum of 20 years as per the age of the applicant or upto the age of 50 years. The date of renewal is not mentioned in Ex.RW2/1 as it was not provided in the software. Only the date of issue and the last date of validity used to be mentioned earlier. Now the software has been changed and the date of renewal is also mentioned. The original licence is seen by me is a computerized licence. The computerized licence by Saarthi Software in question has been issued, were started only in the year 2007. The computerized licence was not issued in the year 1987. My report dated 22.07.2011 is Ex.C1.”

6. It is apparent from the testimony of the MLO that the driver(Respondent No.3) did not possess any licence during the period from 22.09.2004 to 07.05.2009. The Claims Tribunal rightly held that the Appellant's plea that he himself saw the driver's licence at the time of engaging him in the year 2006 was palpably false. The Claims Tribunal rightly came to the conclusion that there was a wilful and conscious breach on the part of the Appellant.
7. Thus, the Appeal is devoid of any merit; accordingly the same is dismissed.
8. Statutory amount of ₹25,000/- deposited by the Appellant along with interest, if any, shall be released in favour of the Respondents No.1 and 2 in equal shares. No further amount was deposited by the Appellant. The Respondents No.1 and 2 shall be at liberty to take the execution of the impugned judgment.
9. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 17, 2012

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