

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

Date of Decision : 31st October, 2012

+ **MAC.APP. 374/2010**

ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. Amit Gaur, Advocate

versus

NANHI @ NANNI & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Oriental Insurance Company Limited impugns a judgment dated 8.3.2010 passed by the Motor Accident, Claims Tribunal whereby while awarding a compensation of Rs.1,61,650/- in favour of the first Respondent, the Appellant's plea of breach of terms and conditions of the policy on the part of the Respondent M/s. Khosla Printers, owner of the offending vehicle, was rejected.
2. In order to prove the breach, the Appellant Insurance Company relies on a report dated 17.2.2010 Ex.R3W1/C-A purported to have been issued by the office of Motor Licencing Officer (North-East Zone), Delhi-94. The report is extracted hereunder:

*"To
Sh.Naresh Singh, ASI,
PS Gokal Puri,
Delhi.*

Subject: Regarding verification of D/L no.90060781.

As per your letter received by hand on dated 17-02-2009 (04 PM). It is hereby stated that the above mentioned driving license number is not found in the bunch of driving license records of dated 12-01-1995, which is produced by the record keeper, as per photocopy of driving license, provided by you.”

3. The Appellant Insurance Company sought to prove this report through Pradeep Kaushik, its Administrative Officer, who was examined as R3W1. He was not conversant with the signatures of the official/officer who purported to sign the said report, therefore, he could not prove this report. In this connection, a reference may be made to a judgment of this Court in *State (Delhi Administration) v. Brij Mohan*, 27 (1985) DLT 322 where it was held as under:-

“(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction (evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/ transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by

secondary evidence, I need not dwell upon the same in view of the original document having been placed on the record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the hand-writing of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/ authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act).....”

4. Even if the report is accepted on its face value, it does not say that licence No.P-90060781 held by the driver-Respondent Uday Kant Jha was not issued by the concerned MLO. The report simply says that the licence was not found in the bunch of the driving licence record dated 12.1.1995 produced by the record keeper. This was not sufficient to prove that the licence was not genuine.
5. The Appeal is devoid of any merit and the same is, accordingly, dismissed.
6. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.

7. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 31, 2012

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