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

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Judgment delivered on: 30th July, 2013

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MAC.APP. 126/2010

NATIONAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms.Neerja Sachdeva, Advocate.

Versus

SHADAB AND ORS.

..... Respondents

Through: None.

AND

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MAC.APP. 128/2010

NATIONAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms.Neerja Sachdeva, Advocate.

Versus

MAROOF AND ORS.

..... Respondents

Through: None.

AND

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MAC.APP. 129/2010 & CM No. 4066/2010

NATIONAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms.Neerja Sachdeva, Advocate.

Versus

FAIZUL HAQUE AND ORS.

..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. While dictating the judgment, it is noticed that in the memo of parties in MAC. Appeal No.126/2010, name of respondent No. 1 has been wrongly written as 'Shabad', though it should have been 'Shadab' as has been mentioned in the claim petition bearing Suit No.716/08. Hence, the same is corrected.
2. All the above mentioned three appeals are impugning the award dated 05.12.2009, passed by the learned Tribunal in three claim petitions bearing Suit Nos. 716/08, 715/08 and 139/07 arising out of the same motor vehicle accident occurred on 01.06.2006. Therefore, all three appeals, noted above, are being disposed of by this Court by the common judgment.
3. Briefly stated, these appeals have been preferred against the impugned award dated 05.12.2009, whereby the learned Tribunal has granted a sum of Rs.14,500/- in MAC. Appeal No.126/2010, a sum of Rs.22,000/- in MAC. Appeal No.128/2010 and a sum of Rs.4,90,680/- in MAC. Appeal No.129/2010 as compensation in favour of the claimants.
4. The case of the appellant/Insurance Company before this Court is that respondent Nos. 2 and 3, the driver and owner of the offending vehicle were proceeded *ex parte* before the learned Tribunal and though the appellant Company proved the fact that the driver of the offending vehicle was not

having a valid driving licence, despite that recovery rights have not been granted in favour of the appellant Company by the learned Tribunal.

5. The respondents/claimants have examined PW1 Ahmed Ali, PW2 Mohd. Irshad, PW3 Sh. Rajbir Singh, Record Clerk, AIIMS and PW4 Sh. Mahender Verma, Record Clerk, Holi Family Hospital in claim petition No. 715/08. Whereas the appellant/Insurance Company has adduced the evidence of R3W1 Sh. Surender Kumar, Administrative Officer and R1W1 Sh. Ravi Bhushan Srivastava, Sr. Assistant, National Insurance Company Limited in defence in the aforesaid Suit No.715/08.

6. Claim petition bearing Suit No. 716/08 was ordered to be consolidated with the second petition, i.e., Suit No. 715/08 vide order dated 02.03.2007 by the learned Tribunal, which has also been challenged before this Court, as noted earlier.

7. Learned counsel appearing on behalf of the appellant/Insurance Company submits that the learned Tribunal has erred in not noticing the testimony of Sh.Ravi Bhushan Srivastava, Sr. Assistant of the Insurance Company, Divisional Office No. 23, who deposed that the vehicle No.HR-38M-2127 was insured with his office and exhibited the copy of the insurance policy as Ex.R3W1/1. The witness deposed that the Insurance Company had issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 which is exhibited as Ex.R3W1/2, postal receipts of the said notice are Ex.R3W1/3 and R3W1/4, A.D. card of the notice sent to the insured, i.e., Manjeet Singh, owner of the offending vehicle (respondent No.3 herein) Ex.R3W1/5, returned envelope sent to the driver, i.e., Nadeem Khan (respondent No.2 herein) as Ex.R3W1/6 and the driving licence report

of the driver, i.e., respondent No.2 issued from the Licensing Authority, Deoria is exhibited as Ex.R3W1/7.

8. Learned counsel further submits that the driver of the offending vehicle was not authorized to drive the said vehicle as licence was not issued for the said vehicle and it was only issued for LMV and Motorcycle.

9. To strengthen her arguments, she has relied upon a case of ***National Insurance Co. Ltd. Vs. Geeta Bhat & Ors., (2008) 12 SCC 426***, wherein the Apex Court has observed as under:-

3. In the proceedings before the Motor Vehicles Accident Claims Tribunal (the Tribunal), it prayed for examination of the concerned clerk of the Motor Vehicles Department. The said prayer was allowed. The concerned Clerk of the Licensing Authority, Alwar was summoned. The said summons were served in the office of the Transport Authority. The Transport Authority, however, did not depute any officer to produce the documents called for.

Appellant, however, brought on records evidence to the effect that on an investigation made by its own investigator, it was found that no such licence had been issued in the name of Gopal Singh, the driver of the vehicle. In its report dated 20.3.2003, the said investigator stated:

"Kindly, note that an application was moved by us to the LA Alwar to issue the verification certificate for the DL No. as cited above, along with the photocopy of the DL received by us.

But our opinion was returned back by the concerning officer because the above ref. DL has no relevancy with the records LA Alwar.

However, the record register was shown to us which shows that DL No. 20734/94 was issued on dated 28.3.94.

Thus, it is confirmed that no such DL No. 3956/Alwar/94 dated 27.3.94 is issued by LA Alwar.

Conclusion: Verification certificate for the above said DL cannot be obtained from LA Alwar.

This report is issued without prejudice.”

4. The Tribunal, however, on the premise that the said fact was not proved, held:

The insurance company in spite of availing several opportunities did not lead any evidence in support of this assertion that Respondent No. 1 was not holding a valid and effective driving licence. So the Insurance Company has failed to discharge the onus of this issue. Accordingly this issue is decided against the Insurance Company.”

10. The learned Tribunal has opined that the Insurance Company has failed to produce either the official from the concerned Licensing Authority or its own investigator. The officials from STA had not turned up despite service and the Insurance Company has produced one of his officials who simply proved the policy only. The investigator of the Company, who was in the control of the Company itself and who had prepared the report regarding the fake licence has not brought into the witness box.

11. In my considered opinion, the learned Tribunal has gone wrong while recording that the Insurance Company could not produce any of the documents. On the contrary, the appellant/Insurance Company has proved Ex.R3W1/2, the notice issued under Order XII Rule 8 CPC; Ex.R3W1/3 and R3W1/4, postal receipts of the said notice; Ex.R3W1/5, A.D. card of the aforesaid notice sent to owner/respondent No.3 and Ex.R3W1/6, returned envelope sent to the driver/ respondent No.2. The driving licence report of the driver issued from the Licensing Authority, Deoria has also been proved

as Ex.R3W1/7 and this witness also deposed that the offending vehicle is not covered by the said driving licence.

12. The respondent Nos. 2 and 3, driver and owner of the offending vehicle were proceeded *ex parte* before the learned Tribunal. Therefore, there is no rebuttal from their side.

13. Respondent No.2 served through publication in these appeals. Respondent No.3, owner of the offending vehicle though served but preferred not to appear, therefore, vide order dated 28.04.2011, he was proceeded *ex parte* before this Court also.

14. In view of the above discussion, I grant recovery rights in favour of the appellant/Insurance Company and against the respondent No.3/owner of the offending vehicle.

15. All these appeals are disposed of in the above terms.

16. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company.

CM No. 4066/2010 (for stay) in MAC. Appeal No. 129/2010

With the disposal of the appeal itself, the instant application has become *infructuous*. The same is accordingly disposed of.

SURESH KAIT, J.

JULY 30, 2013

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