

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

% Judgment delivered on: 20th December, 2013

+ MAC.APP. 717/2011

NEW INDIA ASSURANCE CO LTD. Appellant

Represented by: Mr.Abhishek Kumar and
Mr.Vijay Singh, Advocates.

Versus

BHAVNEET KAUR & ORS Respondents

Represented by: Mr.A.K. Babbar, *Amicus*
Curaie for Respondent Nos. 1
and 2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The appellant/Insurance Company has assailed the impugned award dated 06.04.2011, whereby the learned Tribunal has granted compensation as under:-

<i>"Loss of dependency</i>	<i>Rs.9,00,000/-</i>
<i>Loss of consortium</i>	<i>Rs. 10,000/-</i>
<i>Loss of estate</i>	<i>Rs. 10,000/-</i>
<i>Funeral expenses</i>	<i>Rs. 5,000/-</i>
<i>Loss of love and affection</i>	<i>Rs. 75,000/-</i>
	<i>Rs.10,00,000/-</i>
<i>Less Interim compensation (-)</i>	<i>Rs. 50,000/-</i>
	<i>Rs.9,50,000/-</i>

Interest at the rate of 7.5% *per annum* was also awarded from 19.03.2009 till its realization by the learned Tribunal.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that the respondent No.2, i.e., driver of the offending vehicle was not holding valid driving licence on the date of the accident, i.e., 13.12.2005.

3. He further submitted that initially respondent Nos. 1 and 2 appeared in the court and thereafter, stopped appearing; therefore, the learned Tribunal proceeded *ex parte* against them.

4. Also submitted that the appellant/Insurance Company had placed on record, before learned Tribunal, a letter dated 01.01.2009 from the Office of Sub-Divisional Transport Officer, wherein it is stated that the licence No. R 30878/KP was issued from their office on 09.03.1995 for driving motorcycle with gear in favour of Sh.Ram Kumar S/o Sh. Sampat. He pointed out that the aforesaid licence was never issued in the name of Sh.Ramesh Kumar /respondent No.2, i.e., driver of the offending vehicle, despite that the learned Tribunal has not granted recovery rights in favour of the appellant/Insurance Company.

5. He submitted that the appellant/Insurance Company had taken steps to examine witness from the concerned Authority, but they failed to appear before the Court. However, the Transport Authority had sent the aforesaid communication dated 01.01.2009, which suffice to prove that respondent No.2/driver of the offending vehicle was not holding valid driving licence on the date of the accident. Therefore, in that

eventuality, the learned Tribunal ought to have granted recovery rights in favour of the appellant/Insurance Company.

6. Moreover, during pendency of the claim petition, the appellant/Insurance Company had issued a notice under Order XII Rule 8 read with Section 151 CPC for production of documents, but the respondent Nos. 1 and 2 did not produce any document in support thereof.

7. To strengthen his arguments, he has relied upon a case bearing MAC. APP. No.701/2011, titled as '***Oriental Insurance Company Ltd. Vs. Jai Chand & Ors.***' decided on 04.01.2012 by a Coordinate Bench of this Court. The relevant portion of the same reads as under:-

"8. The learned Single Judge further held that although the onus is on the Insurer to prove that there was breach of condition of policy, but once the record of the Licensing Authority is summoned to prove that the driver did not possess a valid driving licence, the onus would shift on the Insured (the owner of the vehicle) who must then step into the witness box and prove the circumstances under which he acted and handed over the vehicle to the driver. Paras 22 to Para 24 of the report are extracted hereunder:-

"22.....

23. Where the assured chooses to run away from the battle i.e., fails to defend the allegation of having breached the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has not case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that

had the evidence been produce, the same would have been against said person. As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.

24.....”

8. Counsel for the appellant/Insurance Company submitted that since respondent Nos.1 and 2, i.e., owner and driver of the offending vehicle, neither filed any written statement nor produced the driving licence, therefore, the appellant/Insurance Company is entitled for recovery rights against them.

9. It is pertinent to mention here that respondent Nos. 1 and 2, i.e., owner and driver of the offending vehicle though served by way of publication, however, none appeared on their behalf, therefore, vide order dated 30.04.2013, this Court appointed Mr.A.K. Babbar, Advocate as an *Amicus Curiae* to represent the aforesaid respondents.

10. Learned *Amicus Curiae* appearing on behalf of the aforesaid respondent Nos. 1 and 2 submitted that the appellant/Insurance Company has not made any prayer/averment in the present appeal seeking recovery rights in its favour. Therefore, the present appeal deserves to be dismissed.

11. He further submitted that by the aforesaid letter dated 01.01.2009, official of the concerned Authority had requested for exemption from personal appearance only on 22.01.2009. However, thereafter, the appellant/Insurance Company made no efforts to examine any witness

from the said Authority to prove that the respondent No.2/Ramesh Kumar was not holding valid driving licence on the date of the accident.

12. I have heard the learned counsel for the parties.

13. On perusal of the record, it is emerged that the appellant/Insurance Company has examined its Investigator as RW3, who stated that the licence seems to be forged and bogus because record of the same could not be traced out in regular process. Admittedly, no witness has been examined by the appellant/Insurance Company from the Motor Licensing Authority, Kanpur to prove the authenticity of the letter dated 01.01.2009.

14. Fact remains that the respondent No.2/driver of the offending vehicle produced the driving licence bearing No. P/36810/99 dated 24.07.1999, which was valid upto 23.08.2008. It is also admitted that the driver of the offending vehicle was not prosecuted under Section 3/181 of the Motor Vehicles Act, 1988 for not possessing valid driving licence.

15. Therefore, in my considered view, the appellant/Insurance Company has not led any cogent evidence before the learned Tribunal to prove that the driving licence produced by the respondent No.2/driver of the offending vehicle was forged and bogus. Moreover, at the Appellate stage, the appellant/Insurance Company did not make any effort to lead additional evidence to establish that the insured had violated the terms and conditions of the insurance policy by handing over the vehicle to a person, who was not holding valid and effective driving licence.

16. In view of the above discussion, I do not find any discrepancy in the impugned award dated 06.04.2011 passed by the learned Tribunal, therefore, I confirm the same.

17. Consequently, the present appeal is dismissed.

18. Statutory amount be released in favour of the appellant/Insurance Company and compensation amount with interest accrued thereon be released in favour of the respondents/claimants in terms of the award dated 06.04.2011 passed by the learned Tribunal.

19. Before parting with this judgment, I record the appreciation of assistance rendered by Mr.A.K. Babbar, learned *Amicus Curiae* appointed on behalf of respondent Nos. 1 and 2.

SURESH KAIT, J.

DECEMBER 20, 2013
sb