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

% *Judgment delivered on: 11th July, 2013*

+ **MAC.APP. No. 485/2010**

NEW INDIA ASSURANCE CO LTD. Appellant
Through: Mr.Sameer Nandwani, Advocate.

Versus

SUBEY SINGH & ORS. Respondents
Through: Mr. Advocate for Respondent Nos. 1
and 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred by the Insurance Company against the impugned award dated 19.05.2010, whereby the learned Tribunal has granted the compensation as under:-

<i>"Loss of dependency</i>	:	<i>Rs.3,69,252.00</i>
<i>Loss of Estate</i>	:	<i>Rs. 10,000.00</i>
<i>On account of Love and affection</i>	:	<i>Rs. 50,000.00</i>
<i>Loss of funeral expenses</i>	:	<i>Rs. 5,000.00</i>
<i>Total :</i>		<i>Rs.4,34,252.00</i>

2. Learned counsel appearing on behalf of the appellant/Insurance Company has mainly argued on two points, firstly, the

respondents/claimants have not proved the negligence of the driver of the offending vehicle and secondly, in the absence of the licence or fake licence, the Insurance Company is not liable to pay any compensation and it should be exonerated from any liability.

3. The appellant has examined one Sh. S.K. Jain, AO, who testified that Driving Licence No.25042/Agra/2011 dated 31.01.01 in the name of Zile Singh was got verified by the Insurance Company through its Local Office Investigator Sh.Surender Kumar Sharma. The report Ex.R3W1/A was given on 23.04.2008, wherein it was stated that in Agra RTO, one Clerk Om Prakash Verma issued so many fake driving licences, therefore, the record was sealed by the District Magistrate. He also proved the notice Ex.R3W1/B issued under Order XII Rule 8 CPC to the owner and driver of the offending vehicle despatched vide postal receipt Ex.R3W1/C and D.

4. The learned Tribunal on the issue of fake licence has opined that in the report dated 23.04.2008, the Investigator Sh. Surender Kumar Sharma had mentioned that in view of the seizure of the entire record by the District Magistrate, due to the involvement of RTO Clerk Om Prakash Verma in issuing fake licence, it was not possible to give any such report showing that the driver was not having a valid driving licence.

5. On the issue of fake or invalid driving licence, Apex Court in ***National Insurance Co. Ltd. v. Swaran Singh and Ors. 2004 ACJ 1*** has held as under:

“The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section [149](#), have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time, (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.”

6. In ***Oriental Insurance Co. Ltd. v. Rakesh Kumar and Ors. 2012, ACJ, 1268***, Coordinate Bench of this Court has held as under:

*“Since there was no willful breach of the condition of policy, in view of the law laid down in *Lehru & Ors. 2003 ACJ 611 (SC)* and *Swaran Singh 2004 ACJ 1 (SC)* the Insurance Company, therefore, cannot avoid liability. As I have already quoted earlier, the Claims Tribunal held that the first Appellant was not aware that the licence was fake. It also held that the Insurance Company had not proved on record that the owner was not aware that the driver did not hold a valid driving licence at the time of the accident.*

In the circumstances, The Claims Tribunal's order granting recovery rights to the First Respondent Insurance Company against the owner cannot be sustained. The impugned order to that extent is set aside.”

7. Moreover, as the appellant did not take any steps to summon the record from the office of the District Magistrate, therefore, the learned Tribunal held the appellant liable to make the payment.

8. Keeping in view the peculiar facts of the case, if any person who was in authority and had issued fake licences, then no fault can be attributed on the part of the person who got issued the licence from the competent authority. If, someone had committed wrong while sitting in authority, then the appellant/Insurance Company may sue that authority. Moreover, appellant has failed to produce any documentary evidence and examine any witness on that aspect. Therefore, on this issue, in my considered view, the learned Tribunal has rightly not given the recovery rights to the appellant/Insurance Company.

9. So far as the issue of negligence is concerned, learned counsel for the respondents/claimants has submitted that it is not a criminal case where strict proof of evidence is required. In the present case the inquiry was being conducted under the Welfare Act. He further submitted that certified copy of the charge sheet was filed, wherein the driver of the offending vehicle was made an accused, therefore, there was no requirement of any eye witness to prove the negligence.

10. I find force in the submission of the learned counsel for the respondents/claimants in view of the fact that the learned Trial Court has relied upon the criminal record filed by the respondents/claimants, which was proved by respondent No.1, who appeared as PW1 before the learned Tribunal. The appellant failed to examine any witness to prove that driver of the offending vehicle was not negligent.

11. The fact remains that the appellant/Insurance Company made no efforts to produce any witness to that effect either before the learned Tribunal or before this Court. I do not find any discrepancy in the award passed by the Tribunal.

12. In view of the above discussion, the appeal is dismissed.

13. Resultantly, the Registry of this Court is directed to refund the statutory amount in favour of the appellant/Insurance Company.

14. Vide order dated 27.08.2010, 75% of the awarded amount has already been released in favour of the claimants in terms of the award passed by the learned Tribunal. Hence, the Registrar General of this Court is directed to release the remaining amount of the compensation in favour of the respondents/claimants in terms of the award dated 19.05.2010 passed by the learned Tribunal.

SURESH KAIT, J.

JULY 11, 2013

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