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

% *Judgment delivered on: 18th February, 2013*

+ **CM(M) No. 1499/2011 & CM No. 23577/2011**

ORIENTAL INSURANCE CO LTD. Petitioner
Through: Ms.Manjusha Wadhwa, Advocate.

Versus

ANJLEENA KHUNGER & ORS. Respondents
Through: Mr.Ramakant Gaur, Advocate for
Respondent Nos. 1 to 4.
Mr. Tarun Rana, Advocate for
Respondent Nos. 6 to 9.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM(M) No. 1499/2011

1. Vide the instant petition, the petitioner/Insurance Company seeks setting aside/modification of the impugned order dated 24.08.2011 and subsequent order dated 14.11.2011 passed by the learned Tribunal in M. No. 3/10 titled as *Anjleena Khunger & Ors. Vs. Oriental Insurance Company & Ors.*, whereby an application under Order 9 Rule 13 CPC filed by the respondent/legal representative Nos. 1 to 4 of the deceased and respondent

No.5 / owner of the offending vehicle for setting aside the *ex parte* judgment and award dated 04.05.2006 vide which recovery rights were granted to the petitioner/Insurance Company was allowed and the aforesaid award has been corrected vide order dated 03.06.2006.

2. The accident in the present case took place on 14.07.2003 and the claim petition has been filed before the learned Tribunal on 25.10.2003, wherein Respondent No.1, the driver was the sole proprietor of respondent No.2, owner (firm).

3. Petitioner was the respondent no. 3 before Tribunal.

4. Vide order dated 14.11.2003, the respondent Nos. 1 and 2 (before Tribunal) were proceeded *ex parte*. The explanation for their non-appearance was that Sh.Arjun Khunger, driver of the offending vehicle was died within 15 days of issuance of summons in the claim petition.

5. The learned Tribunal has passed the impugned award dated 04.05.2006 in favour of the claimants and against the driver and owner. The Insurance Company was directed to pay the entire amount however, the recovery rights were given against them.

6. An application under Order 9 Rule 13 CPC was filed by the respondent no. 1 to 4 (Legal representative of the deceased) on 05.12.2008 and the same was allowed by the learned Tribunal vide order dated 24.08.2011 with costs of Rs.1,00,000/-, however, the same has been thereafter modified/reduced to Rs.50,000/- vide order dated 14.11.2011.

7. On moving the aforesaid application for setting aside the *ex parte* judgment and award dated 04.05.2006, since the Insurance Company had contended that respondent No. 1 (before tribunal) was served before he had

died and was also proceeded *ex parte* before his death, therefore, the *ex parte* order and *ex parte* judgment are not bad in law.

8. It is further contended that it was the duty of the LR's of respondent No.1 (before Tribunal) that they should have taken care of their case and should have pursued the matter which they failed to do so despite being aware of the pendency of the case when they had contested their case against the Insurance Company before the Consumer Court. If they had taken care of their case, since it was in their knowledge, then this matter would not have been decided against them.

9. It is also contended by the Insurance Company that despite issuance of notice to the wife of deceased for producing the valid driving licence, she had neither filed any reply nor produced the valid driving licence before the Insurance Company.

10. At this stage, learned counsel appearing on behalf of the petitioner/Insurance Company has clarified that a summon was issued to respondent No.1/driver before his death and thereafter, notice for producing the valid driving licence was also issued to respondent No.1/driver before his death, however, the same was received by wife of the respondent No.1.

11. After considering the testimony of the concerned witness i.e. R3W1 Sh. Vinod, concerned Clerk, Licensing Authority, Panipat, Haryana and the certified copy of reply received under the RTI and certified copy of testimony of concerned Clerk, Licensing Authority, Karnal, Haryana before the Consumer Court, has opined that in this case Insurance Company has been granted recovery rights for the reason that on the date of accident, driving licence of Sh. Arjun Khunger i.e respondent No.1 was not found valid.

12. It is further recorded that, “testimony of R3W1 shows that in his cross-examination conducted by counsel for the petitioner, wherein he has stated that on perusal of the driving licence RX1 of respondent No.1, it appears to be bearing seal of RTO, Karnal, Haryana, but he could not say so with authority as to whether it was renewed from RTO, Karnal.”

13. Further recorded that, “since compensation amount has not been challenged in the execution petition filed by the Insurance Company except on the ground of recovery rights granted to it, therefore, the award be set aside only to the extent of recovery rights to the Insurance Company on the following condition:-

That respondent Nos. 1 and 2 will produce witness from Licensing Authority, Karnal, Haryana to prove validity of the driving licence of respondent No.1 as on the date of the accident.”

14. Learned counsel appearing on behalf of the petitioner/Insurance Company has submitted that the stand of the Insurance Company is that the driving licence was fake and never issued by the Licencing Authority, Panipat, Haryana and the same was also not valid on the date of the accident.

15. However, case of the respondents/driver and owner is that the licence was initially issued from Licencing Authority, Panipat, Haryana and thereafter, the same was got renewed from the Licencing Authority, Karnal, Haryana.

16. It is clear from the record that the amount awarded by the learned Tribunal has already been deposited by the Insurance Company and the same has been paid in favour of the claimants. The impugned order was passed when the Insurance Company had filed an execution application before the learned Tribunal.

17. Learned counsel for the petitioner/Insurance Company has submitted that in case the Insurance Company losses the recovery rights and the respondents/legal representative Nos. 1 to 4 and respondent No.5 succeed in establishing that the driving licence was valid on the date of the accident, then the petitioner/Insurance Company should be given right to challenge the impugned award on all grounds including the quantum.

18. I do not find force in the submissions of the learned counsel for the petitioner/Insurance Company for the reason that the claimants have already received the compensation amount against the award, which has been passed in the year 2006. Seven years had already been passed since then and the money might have been consumed by the claimants, therefore, I do not deem it appropriate to give such right after lapse of seven years.

19. In view of the controversy arising in the instant petition, the justice would be met in favour of both the parties minus the claimants. However, I direct the learned Tribunal to investigate the matter on the following two grounds:-

1. Whether the driving licence was validly issued from the Licensing Authority, Panipat, Haryana and it was renewed thereafter from the Licensing Authority, Karnal, Haryana?
2. Whether the driving licence was valid on the date of the accident?

20. To prove the aforesaid facts, since the respondents have already led evidence, therefore, the petitioner/Insurance Company should be given the opportunity to cross-examine the witnesses with liberty to lead further evidence, if required, in their favour. In such a situation, if the respondents also feel the necessity of leading any further evidence to support their case,

the liberty should be given to them to do so, but that will be subject to if the petitioner/Insurance Company lead any further evidence.

21. Ordered accordingly.

22. I here make it clear that testimonies of R3W1, Sh. Vinod Kumar, Licencing Clerk, Licencing Authority, Panipat, Haryana and R3W2 Sh. Jasbir Singh, Branch Manager, M/s Oriental Insurance Corporation Limited, Panipat, Haryana recorded on 25.11.2005 and 05.04.2006 respectively be also taken into consideration by the learned Tribunal, while deciding the issues in question.

23. If the recovery rights have been taken away from the petitioner/Insurance Company, then it will have the liberty to challenge the same before the appropriate Forum in accordance with law minus to file the appeal on quantum.

24. The learned Tribunal shall not release the amount attached in the execution petition from the account of the owner of the offending vehicle till the pendency of the issue before it.

25. I expect from the learned Tribunal to decide the above noted issues expeditiously.

26. With the aforesaid observations, the instant petition stands disposed of.

27. TCR be sent back. The Registry of this Court is directed to send a copy of this order to the learned Tribunal for compliance.

CM No. 23577/2011(for stay)

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

SURESH KAIT, J.

FEBRUARY 18, 2013

Sb/jg