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

% *Judgment delivered on: 13th February, 2014*

+ MAC.APPEAL NO. 1020/2012

NEW INDIA ASSURANCE CO LTD Appellants
Represented by: Manu Shahalia, Adv.

versus

CHANDESHWAR SAHNI & ORS Respondents
Represented by: Mr. Dilip Singh and
Mr. Sujeet Singh, Adv. for R3 and R4.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is directed against the impugned award dated 23.04.2012, whereby Ld. Tribunal awarded compensation for a sum of Rs.3,25,000/- with interest @ 9% per annum from the date of filing of the petition till realization of the amount.

2. Ld. Counsel appearing on behalf of the appellant / insurance company argued the instant appeal on the sole ground that driver of the offending vehicle was not holding valid driving licence on the date of accident, despite that Ld. Tribunal has not granted recovery rights in their favour and against respondent nos. 3 and 4, i.e., the driver and owner of the offending vehicle.

3. Ld. Counsel submitted that the driver of the offending vehicle was holding D/L to drive LMV (Non-commercial) on the date of accident, i.e., 14.03.2006, however was driving the delivery van 'VIKRAM' which was a commercial vehicle. In such eventuality, Ld. Tribunal ought to have granted recovery rights in favour of the appellant, however failed to do so.

4. The brief facts of the case are that on 14.03.2006 at about 1.10 PM, the deceased along with her mother was going from her residence at X-Block, Mangolpuri, Delhi towards Dr. Umed Kapoor Clinic for taking medicines. When they reached at X-Block and crossing the road that goes towards K-Block side, suddenly a TSR bearing NO. DL-1LF-7010 (Delivery Van VIKRAM) which was being driven by its driver / respondent no. 3 at a very high speed, rashly and negligently without blowing horn and in contravention of the traffic rules came from ST Road 'J' Block, i.e., right side and hit the deceased with great force. As a result of the forceful impact, the deceased fell down on the road and sustained grievous injury on her body. The deceased was removed to Sanjay Gandhi Memorial Hospital, Mongol Puri, Delhi, where she succumbed to the injuries on 16.03.2006.

5. Ld. Tribunal framed one of the issues as under:

“1.....

2. *Whether the driver of the TSR was not having valid driving licence and breached the terms and conditions of the policy?*
OPR-3

3.....

4.....”

6. The appellant / insurance company examined Sh. Manohar Lal, as R3W1, who deposed that the Insurance Company had issued a policy insuring the VIKRAM vehicle vide Engine No. 47447 and Chasis No. 46374. The original policy was sent to the insured. A notice Under Order XII Rule 8 CPC was issued upon the owner and driver for producing the original policy, driving licence and permit of the vehicle. Accordingly, the appellant had obtained a copy of the driving licence and seizure memo. He produced the photocopy of the same as Mark 'A' and 'B'. He also produced the original verification report from the Licensing Authority, Faridabad as Ex.R3W1/5.

7. Thereafter, counsel for respondent nos. 3 & 4, i.e., driver and owner of the offending vehicle moved an application before Ld. Tribunal to lead evidence. Accordingly, same was allowed and opportunity was granted for leading evidence.

8. The witness R1W1, Sh. Ajay Kumar, Additional Licence Clerk from SDM-cum-Licensing Office, Faridabad, Haryana in his testimony stated that as per their record, the licence bearing no. 4928/F/2000 issued in favour of the respondent no. 3 for driving the motorcycle and light motor vehicle (LMV). The said licence was issued on 24.03.2000 valid till 23.03.2003. It was thereafter renewed on 31.03.2003 valid till 30.03.2008. The said licence was again renewed on 21.05.2008 and the same was valid till 20.05.2011. R1W1 produced the photocopy of the record brought by him as Ex.R1W1/A. He specifically stated that he did not know whether on the basis of that licence the driver is qualified to drive the delivery van VIKRAM, which is a TSR. At that stage, the examination was deferred and the Ld. Tribunal

directed the said witness to produce the relevant rules / instructions on the next date of hearing

9. Thereafter, R1W1 was again examined on 26.04.2011, who brought the book of Motor Vehicles Act of 2004 Edition written by Sh. P.K. Sarkar and as per the said book, a person holding the licence of an LMV can drive any vehicle having weight less than 7500 Kg. Admittedly, the offending vehicle was having weight of less than 7500 Kg.

10. In cross-examination by Counsel for the appellant / Insurance Company R1W1 denied the suggestion that the vehicles having three wheels fall in a different category and not in the category of LMV. He did not know whether there is any rule in which three wheelers fall in the category of LMV or not. The licence issued to the driver of LMV covers both commercial as well as private vehicle. He further stated that he did not know about any guidelines or instructions received from higher authorities regarding categories of the vehicle and the licences required for such particular categories. At that stage also his further cross-examination was deferred.

11. Thereafter on 01.08.2011, R3W1 was further examined, who stated that he checked all the relevant rules regarding issuance of licence in Haryana State and also obtained the information from State Transport Authority, Chandigarh. As per the rules, the licences for commercial vehicles up to 7500 Kg falls in the category of LMV and are being issued for a period of 3 years. He produced the fax message received from Transport Commissioner as Ex.R3W1/B, which was received in response to their query vide letter Ex.R3W1/C.

12. In cross-examination done by the counsel for the appellant / insurance company, R3W1 stated that no separate endorsement was made on the licence of driver / respondent no. 3 regarding commercial vehicle authorization. He further denied the suggestion that the licence in question was not valid for driving commercial vehicle.

13. Ld. Counsel of respondent nos. 3 & 4, i.e., the driver and owner of the offending vehicle sought time from the Ld. Tribunal to verify the renewal of driving licence of respondent no. 3, which was issued to him. Accordingly, Sh. Rajesh Kumar, Assistant Driving Licence Clerk from Licensing Authority-cum-SDM, Faridabad, Haryana was examined as R1W2, who stated that as per their record in Register No. 4076 to 5892 at entry no. 4928 of the year 2000, it is mentioned that licence was valid upto 30.03.2008. Again it was renewed up to 20.05.2011.

14. Thereafter, on 08.09.2004, Sh. Yashpal Yadav, SDM, Faridabad appeared and stated that though the file was missing but the original driving licence shows that it was valid on the date of accident and renewed earlier also and was renewed after expiry of the period in the year 2011.

15. It is not in dispute that the onus was on the appellant / Insurance Company, who had taken a technical plea that the driver of the offending vehicle was not holding valid licence at the time of accident as the vehicles having three wheels fall in different category and not in the category of the LMV.

16. Subsequently, on 09.04.2012, the Licensing Authority, SDM (C), Faridabad, Haryana appeared who filed his report and stated that the file

pertaining to the extension of renewal of licence valid up to 30.03.2008 was missing. He further stated that the original copy of the renewed licence was sufficient to prove that this licence was renewed on 31.03.2005 and it was valid up to 30.03.2008.

17. In view of the above discussion, it is proved that the driver of the offending vehicle was holding valid driving licence to drive the vehicle in question on the date of accident. Therefore, I am of the considered opinion that Id. Tribunal has rightly not granted recovery rights in favour of the appellant and against respondent nos. 3 & 4, i.e., driver and owner of the offending vehicle.

18. Ld. Counsel appearing on behalf the appellant has submitted that Ld. Tribunal has awarded Rs.31,000/- as counsel's fee and Rs.4,000/- as out of pocket expenses without its jurisdiction and it is not permitted under the Motor Vehicles Act.

19. The issue of lawyer's fee and out of pocket expenses has been decided by this court in the case of **ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi & Ors.** decided on 30.07.2012, wherein it is held that Tribunal has no power to grant counsel's fee and out of pocket expenses. Hence, the judgment dated 23.04.2012 qua the lawyers fee and out of pocket expenses. is set aside.

20. Accordingly, statutory amount with excess amount, if any, with proportionate interest accrued thereon shall be released in favour of the appellant and the compensation amount, if any, be released in favour of the respondents / claimants.

21. The present appeal is partially allowed.

CM. NO. 16125/2012

With the disposal of the instant appeal itself, instant application has become infructuous and disposed of as such.

SURESH KAIT, J

FEBRUARY 13, 2014

Jg