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

Date of Decision: 09th March, 2016

+ **MAC.APP. 203/2011**

BIJENDER SINGH

..... Appellant

Through: Mr. Dushyant Sisodia & Mr.
Ravinder Yadav, Advs.

versus

BANO & ORS

..... Respondents

Through: Mr. Pradeep Gaur, Adv. for R-7.

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Hoshiyare Singh, a Baildar working with Municipal Corporation of Delhi, suffered injuries in a motor vehicular accident at about 9.30 p.m. on 14.09.2005 involving Tata truck bearing registration No. HR 63 1312 (the offending vehicle) and died as a result. His widow, mother and children filed a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal) on 07.10.2005 whereupon it was registered as MACT case No. 636/2008 (2005).

2. As per the case originally presented, the offending vehicle was driven at the time of accident by Kanwar Pal Singh, son of Ram Singh, resident of Village Nurawali, Hasanpur, District Moradabad, UP who was impleaded as

the first respondent in the said proceedings. The claimants also impleaded Bijender Singh, son of Attar Singh (the owner of the offending vehicle) and Oriental Insurance Company Ltd. (the insurer against third party risk in respect of the offending vehicle) as party respondents.

3. Upon notice, the person described as Kanwar Pal Singh, son of Ram Singh of Village Nurawali appeared (besides other respondents) and filed written statement on 12.4.2006 denying involvement. The tribunal's record shows that the said Kanwar Pal Singh of Village Nurawali moved an application on 23.8.2006 seeking his name to be deleted from the array of parties on the ground that the correct description of the driver was Kanwar Pal Singh, son of Ram Singh, resident of Burawali, Hasanpur, District J.P. Nagar (Amroha), UP.

4. Interestingly in the said application, the person who had appeared as Kanwar Pal Singh of Village Nurawali gave his date of birth as 15.5.1965 and that of the person who was actually the driver of the vehicle as 19.4.1977.

5. The above-mentioned application moved on 23.8.2006 was allowed by the tribunal by order dated 23.11.2006, upon it being conceded by the counsel for the claimant that there had been some confusion on account of which a wrong person had been impleaded.

6. On the basis of application subsequently moved on 27.1.2007 Kanwar Pal Singh, son of Ram Singh, resident of Village Burawali, Hasanpur, District Amroha, UP was impleaded as the first respondent in place of the person impleaded earlier. Fresh notice was issued in the name of the said substituted first respondent (now eighth respondent before this Court). The

said substituted first respondent before the tribunal appeared in response to the notice and filed his written statement on 28.4.2007, *inter alia*, denying involvement in the accident.

7. During inquiry into the claim petition, the plea of the insurance company that there had been breach of terms and conditions of the policy in that the driver of the offending vehicle was not holding a valid and effective license was also probed. The insurance company led evidence by examining Ashok Sharma, Administrative Officer (R3W1) to prove the report of verification about the driving license that had statedly been handed over by the driver to the investigating police officer in the connected criminal case, its copy having been submitted (at page 162 of the paper book). The witness examined by the insurance company proved report (Ex.R3W1/B) indicating that the said driving license purporting to have been issued by the licensing authority at Moradabad UP was a fake document. The witness for the insurer also proved that notices under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) had been issued to the owner and driver of the offending vehicle but there had been no response from their side. The insurer also examined Jaipal an official of the Regional Transport Authority, Moradabad (R3W1) to prove that the document purporting to be the driving license of the driver was a fabricated document.

8. The tribunal, by judgment dated 1.9.2009, awarded compensation in favour of the claimants in the sum of ₹ 14,58,000/- with interest from the date of filing of the petition till realization. The insurer was directed to pay the said awarded compensation within the period specified. Its contentions about the breach of terms and conditions of the policy were upheld and it

was granted recovery rights against the driver/owner of the offending vehicle.

9. The appeal at hand was filed by the owner of the offending vehicle questioning the grant of recovery rights to the insurance company. The basic contention raised by the appellant is that the driving license purportedly issued on 23.11.1997 by the Regional Transport Authority, Moradabad, UP which was the basis of the evidence led by the insurance company was not the correct driving license and that the owner had believed the capacity and competence of the driver to be allowed to drive the motor vehicle in question based upon the driving license dated 14.5.2003 issued by the licensing authority at Fatehgarh District Farrukhabad (UP). It is the contention of the appellant that the said driving license of Fatehgarh District Farrukhabad (UP) was valid for the date of accident. A copy of the driving license purportedly issued by the licensing authority at Fatehgarh District Farrukhabad (UP) on 14.5.2003 has been submitted (at page 165 of the paper book). It may be added that both the documents, copy of the driving license purportedly issued by authority at Moradabad (submitted during the inquiry before the tribunal) and the driving license purportedly issued by authority at Fatehgarh District Farrukhabad (UP) (as submitted during the hearing on the appeal before this Court) seem to be bear photographs, which appear to be of the same person. It also needs mention here that the date of birth of the respective license holders in both the documents is also the same (19.4.77). Since the name and parentage of both the persons was admittedly the same, the only difference appears to be in the name of the village from which the license holder hailed.

10. Learned counsel for the insurance company fairly conceded that the document now submitted and relied upon by the owner of the vehicle requires closer scrutiny and appropriate inquiry. He, however, added that the document submitted even now appears to be a forged document. The counsel for the appellant, on the other hand, submitted that he stands by the document now filed since it has been duly verified and that in case it is found to be forged, the appellant is ready to face criminal prosecution.

11. In the aforementioned facts and circumstances, the appropriate course would be to remit the matter for a detailed inquiry into the genuineness and effect of the driving license now shown to this Court. The matter is, thus, remitted. The tribunal shall hold an inquiry by giving an opportunity to the appellant herein to prove the genuineness of the document purported to be the driving license issued by the licensing authority, at Fatehgarh District Farrukhabad (UP) in favour of the eighth respondent, by calling the official witness from the said authority. Needless to add, the insurance company will be entitled to participate not only by cross-examination of the witness thus examined but also for adducing evidence in rebuttal. If the appellant were to succeed in proving the genuineness of the document, the tribunal will have the jurisdiction to vacate the recovery rights granted to the insurance company. Conversely if the document is found to be a fabricated one, tribunal will be well-advised to examine the expediency of initiating criminal action in accordance with law and taking necessary steps in such wake.

12. By order dated 31.05.2011, the appellant had been given liberty to deposit the amount recoverable by the insurance company in terms of the

recovery rights granted to it by the tribunal in instalments. The counsel for the appellant submits that the order was duly complied with and the entire amount payable under the impugned judgment to the insurance company stands deposited with the Registrar General of this Court since kept in fixed deposit receipt, initially for a period of one year and would have been renewed from time to time. The said deposited amount(s) shall now be transferred by the Registrar General to the tribunal which shall retain it in a nationalized bank for a period of one year to be renewed from time to time for being utilized either for refund to the appellant or for it being released to the insurer, as the case may be, in accordance with the conclusions reached at the inquiry hereby remitted.

13. The parties are directed to appear before the tribunal on 5th April, 2016. The matter requires expeditious conclusion. Therefore, it is directed that the tribunal shall make all endeavour to conclude the limited inquiry hereby remitted to it within six months from the date of appearance indicated above.

14. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 09, 2016

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