$~20 & 21 *(common order)*

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

***Decided on: 15th December, 2017***

\+ MAC.APP. 334/2012 and CM No.5721/2012

ALOK KUMAR RANJAN ..... Appellant
Through: Mr. R.K. Sahni, Advocate with Mr. Prateek Mehta, Advocate

versus

SMT RAMA ARORA & ANR ..... Respondents
Through: Ms. Suman Bagga, Advocate with Mr. Pankaj Gupta, Advocate for R-2.

\+ MAC.APP. 1099/2014

RAMA ARORA & ANR ..... Appellants
Through: Ms. Suman Bagga, Adv. for P-2.

versus

ALOK KUMAR RANJAN ..... Respondent
Through: Mr. R.K. Sahni, Advocate with Mr. Prateek Mehta, Advocate

**CORAM:**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The accident claim case (Suit No.246/09) was instituted by Rama Arora (the claimant) on 13.07.2009 seeking compensation for

injuries suffered by her in a motor vehicular accident that had occurred on 05.01.2009, involving collision between the two cars, one Santro Car, bearing registration No.DL-2C-AD-2256 (hereinafter referred to as the 'santro car') registered in the name of Alok Kumar Ranjan (appellant in MAC APP.334/2012) and the other, maruti zen car bearing registration No.DL-8CD-4869 (hereinafter referred to as the 'maruti zen car"). The claimant was traveling in Maruti zen car and alleges that the santro car was driven in a rash manner by its registered owner Alok Kumar Ranjan (appellant in MAC APP.334/2012) causing the accident. The santro car was admittedly insured against third party risk for the period in question with Bajaj Allianz General Insurance Company Limited (insurer of the santro car). Both the owner and insurer of the santro car were impleaded as party respondents by the claimant. The registered owner of the santro car resisted the claim pleading, *inter alia,* in his written statement that the car was not driven by him but by his driver Dabloo Prasad, and that the negligence was on the part of the said driver of the Maruti zen car. The insurer of the said santro car, on the other hand, took the plea that the owner of the said car who, according to the claimant's case, was at the steering wheel did not possess a valid or effective driving licence and, thus, there was a breach of the terms and conditions of the insurance policy.

2. The claimant examined herself in the evidence as (PW-1) to affirm the facts leading to the accident while the registered owner of the santro car examined himself as witness (R1W1) to prove his version that the car was driven by his driver Dabloo Prasad, he himself

having travelled as a passenger in the rear seat. He also examined said Dabloo Prasad (R1W2) to affirm the said facts on oath.

3. The tribunal, however, disbelieved the said version primarily referring to the fact that pursuant to the investigation into the corresponding First Information Report (FIR) No.3/2009 which had been registered in the Police Station Civil Lines at the instance of the claimant, the registered owner of the santro car had been arrested and action under the criminal law taken against him. The registered owner of the santro car was unable to prove that he was holding a valid or effective driving licence. It is on such basis that while awarding compensation to the claimant, by judgment dated 19.11.2011, and calling upon the insurer of santro car to pay, it was granted recovery rights against the registered owner of the said vehicle.

4. The registered owner of santro car has come up in appeal reiterating the defence that he was not the driver of the car at the relevant point of time and that the finding to this effect is wrong. The insurer of the santro car submitted cross-objections (CM No.4410/2013) which were treated as independent cross appeal (MAC APP.1099/2014), that came to be registered in the wake of order dated 25.11.2014. The cross appeal of the insurer is pressed only to seek dismissal of the said appeal of the registered owner of the santro car.

5. The appellant (registered owner of the santro car) has submitted on record copy of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which had been presented in the court of metropolitan magistrate pursuant to conclusion of the investigation into FIR No.4/2009. The said documents reveal that

another FIR had been registered at the instance of the registered owner of the santro car bearing out his version. This FIR was registered immediately after the FIR No.3/2009 lodged by the claimant. The FIR No.4/2009 contains the version of the registered owner of the santro car to the effect that he was not the driver, rather he was travelling with his driver Dabloo Prasad at the steering wheel. The FIR in fact goes on to state that the said driver had been roughed up after the accident and had to be taken for medical examination to the hospital by the local police. It appears, the police having noted that both sides were accusing each other of negligence leading to the collision, concluded that no prosecutable evidence had come up against either side and, thus, decided to close the proceedings.

6. The learned counsel for the registered owner of the santro car submitted at the hearing copy of the order dated 05.08.2015 passed by this court in Crl.M.C. 3131/2015 and Crl.M.C. 3145/2015 on the petitions, of the registered owner of the santro car and of the claimant, whereby the proceedings arising out of both the afore-mentioned cross FIRs were quashed.

7. It is noted that the claimant, during her cross-examination at the inquiry before the tribunal, had shown at one stage hesitation in identifying the registered owner of the car as the driver. Undoubtedly, she thereafter changed her version and sought to identify the appellant as the driver. But then, the evidence of Dabloo Prasad (R1W2) on the record of inquiry cannot be wished away. In the opinion of this court, the version being contemporaneous rather immediate, ought not to be disbelieved. Noticeably, he was roughed up and taken by police for

medical examination which facts corroborate the theory of his presence and the role attributed to him. This court, thus, accepts the said version and holds that the santro car of appellant Alok Kumar Ranjan was driven at the relevant point of time by his driver Dabloo Prasad and not by him. The above finding, however, cannot result in Alok Kumar Ranjan being totally absolved of his liability. On the principle of vicarious liability he, being the owner of the offending vehicle, is liable to compensate.

8. In the above facts and circumstances, the question arises as to whether there has been a breach of terms and conditions of the insurance policy. Since such conclusion has been reached by the tribunal on the premise that the vehicle in question was driven by Alok Kumar Ranjan, the said conclusion also will have to be disbelieved and set aside. An inquiry may be called for as to whether Dabloo Prasad, the driver, who is found to be at the steering wheel did hold a valid or effective driving licence. On being called upon to respond, however, the counsel for the insurer submitted that she does not press for any such inquiry qua Dabloo Prasad.

9. In the above circumstances, the recovery rights granted against the appellant Alok Kumar Ranjan are hereby set aside.

10. Both the appeals and the pending application are disposed of in above terms.

**R.K.GAUBA, J.**

**DECEMBER 15, 2017**
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