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

Decided on: 24th February, 2015

\+ **MAC.APP. 168/2013**

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. S.N. Sinha, Adv.

versus

ARUN TOURS & TRAVELS PVT LTD & ORS... Respondents

Through: Mr. Vijay Kumar, Adv. for R-3 & R-4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 22.12.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹4,76,667/- along with interest @7.5 % per annum was awarded in favour of Respondents no.3 and 4 (the Claimants) for the death of their son Sohar Ali, a bachelor who suffered fatal injuries in a motor vehicular accident which occurred on 18.10.2009.

2. The only ground of challenge raised by the Appellant Insurance Company is that the Appellant having proved willful and conscious breach of the terms and conditions of the insurance policy on the part of the insured, it ought to have been granted at least recovery rights. Referring to the testimonies of R2W1 and R2W2, the learned counsel urges that it was proved that the driving licence held by driver Praveen Kumar was fake as Driving Licence no.9137 as per R2W1 was issued in the name of one Amardas and not in the name of Praveen Kumar (Respondent no.2 herein).

3. The Claims Tribunal, however, negatived the contention on the ground that the Insurance Company failed to prove that the breach was willful, deliberate and conscious.

4. I have the Trial Court Record before me. The owner examined himself as R2W1 and testified that Praveen Kumar (Respondent no.2) approached him for the job of driver in the month of September, 2009 and showed him his driving licence. He took the driving licence which seemed to be genuine. The driving test of the driver was taken by his supervisor and the driver was

found competent to drive vehicles. This part of the testimony of the owner was not challenged in cross-examination. Driver (Praveen Kumar) also appeared as his own witness and supported the version of the owner.

5. In view of this, it cannot be said that there was conscious and willful breach of the terms and conditions of the insurance policy as the insured had done whatever he could do to avoid breach of the terms and conditions of the insurance policy. Unfortunately, this part of the testimony of the owner was not referred to and dealt with by the Claims Tribunal in the impugned judgment.

6. The learned counsel for the Appellant has referred to the reports of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors., (2004) 3 SCC 297; National Insurance Company Limited v. Laxmi Narain Dhut, (2007) 3 SCC 700; New India Assurance Co. Ltd. v. Sanjay Kumar and Ors., ILR 2007(II) Delhi 733; New India Assurance Co., v. Kamla and Ors., (2001) 4 SCC 342* and *M/s. Oriental Insurance Company Limited v. Rakesh Kumar, 2012 ACJ 1268.*

7. None of the judgments cited laid down as a proposition of law that if the driving licence of the driver is fake, the insurer will be entitled to recovery rights from the insured. Rather It has been held by the Supreme Court in *United India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338* which has been followed in the subsequent judgments of the Supreme Court that breach on the part of the insured must be willful and conscious to entitle the insurance company to recover the compensation paid from the insured.

8. In view of this, the Claims Tribunal rightly declined recovery rights to the Appellant.

9. The appeal therefore, has to fail; the same is accordingly dismissed.

10. The compensation awarded to the Claimants shall be released in favour of Respondents no.3 and 4 (the Claimants) in terms of the orders passed by the Claims Tribunal.

11. Learned counsel for the Claimants states that the Claimants are residents of Assam and it is inconvenient for them to collect the

amount of compensation from Delhi. The Claimants shall be at liberty to move an application for transfer of the amount to the account of the Claimants in the Bank wherever they reside.

12. Statutory amount, if any, shall be refunded to the Appellant Insurance Company.

13. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 24, 2015
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