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

Date of decision: 05th January, 2015

+ **MAC. APP. No.417/2013**

THE NEW INDIA ASSURANCE CO LTD.

..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

Versus

MASTER VIPIN & ORS.

.....Respondents

Through: Mr. Rohan Kanhai, Advocate for
Respondent no.3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This appeal is directed against the order dated 31.01.2013 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby compensation of Rs.2,10,000/- along with interest @ 7% per annum was awarded in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 23.10.2006.

2. The facts of the case have been delineated by the Claims Tribunal in para 2 of the judgment which is extracted hereunder:

“2. As per petitioner, brief facts of the case are that on 23.10.2006 a truck bearing No.HR-38-S-1616 was turned over in the adjacent plot of House No.357, Gali No.1, Phase IV, Block O, Shiv Vihar. A crane bearing regd. No.HR-38-N-1388 was hired on 25.10.2006 to pull the above said truck when the crane driver started to pull that turned over truck cranes back started lifting upwards. Some colony boy were also standing there. The crane driver call them and asked them to sit on the back side of the crane so that it may not got lifted upward. The boys become agree and sit down on the back side of the crane. At about 4:30 p.m. the crane also turned over while trying to pull turned over truck. The petitioner come under the crane and his hand crushed under that crane and petitioner got server crush and other injuries on several parts of his body. It is further alleged that with the help of nearby people he escorted to Indra Nursing Home, Inderpuri from where he was referred to St. Stephen Hospital and thereafter, giving first aid he was referred to Sir Ganga Ram Hospital where his treatment was conducted. Accordingly, an FIR No.788/2006 u/s 287/337 IPC dated 25.10.2006 was registered at Police Station Gokalpuri.”

3. While awarding compensation and discussing liability, the Claims Tribunal held that since driving licence no.2476/MTR/03 held by the driver Respondent no.3 was fake, the appellant although was made liable to pay the compensation, yet recovery rights were granted to it from Respondent no.3.
4. It is urged by the learned counsel for the Appellant that Respondent no.1 was a gratuitous passenger and thus, the Appellant had no liability at all.

5. I have already extracted the facts of the case above. Respondent no.1 was not a gratuitous passenger but had been asked by the driver to sit in the crane so that it may not get lifted upward.
6. In *ICICI LOMBARD GENERAL INSURANCE CO. LTD v. GANESHJI SINGH & ORS.*, (MAC.APP. 887/2011) decided on 17.09.2012, this Court analysed the law with regard to liability of the Insurance Company and opined that even in case of willful breach of terms of policy under Section 149 (2)(a) of the Motor Vehicles Act, 1988, the Insurance Company is under obligation to satisfy the liability towards third parties and recover the same from the owner. This Court referred to various judgments including *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 and *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338 and in para 44 concluded as under:

“44. In view of the foregoing discussion, it is held as under:-

(i) “In order to avoid an obligation to indemnify the Insured, the Insurer is under obligation to establish that there was conscious and willful breach of the terms of the policy.

(ii) Even when there is a willful breach of the terms of the policy under Section 149 (2) (a) of the Act, the Insurance Company is under obligation to indemnify (sic satisfy) the liability towards the third parties and recover the same from the owner.

(iii) Once the Insured proves that the driver did not hold any driving licence to drive the Class of vehicle involved in the accident or that the driving licence was fake; requires the owner and driver to produce the driving licence and if they failed to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, in such cases, it will be presumed that he was guilty of a willful breach. The Insured in such cases, would be entitled to recover the compensation paid to third party in discharge of its statutory liability.

(iv) Where policy is avoided on proof or facts which renders the Insurance policy void under Section 149 (2) (b) of the Act, the Insurance Company would not be under obligation to pay even to third parties, as in such cases the contract of insurance is nonest.”

7. In the instant case, the insurance policy is not void and therefore, the Appellant Insurance Company shall be under an obligation to satisfy the award with regard to payment of claimant.
8. It is, however, made clear that the Appellant Insurance Company shall be entitled to recover the compensation paid to the first Respondent in execution of this very judgment without having recourse to independent proceedings for recovery of the amount.
9. The balance amount shall be released in favour of Respondent no.1.
10. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
11. The Appeal is dismissed in above terms.

12. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 05, 2015
pst