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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th January, 2015

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MAC.APP. 459/2011

ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. A. K. Soni, Advocate.

versus

ASHOK KUMAR VALECHA & ORS Respondents
Through: Mr. M.L. Bajaj, Advocate for
Respondent No-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The instant appeal is directed against the judgment dated 8.2.2011 passed by the Claims Tribunal whereby compensation of Rs.3,00,900/- was awarded in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 12.12.2005.
2. Mr. A.K. Soni, learned counsel for the Appellant submits that the Appellant proved the breach of terms and conditions of the insurance policy and even if the Appellant was not exonerated, at least recovery rights ought to have been granted.
3. It is urged by the learned counsel for the Appellant that as per the attested copy of the report under Section 173 Cr.P.C. placed on record, it was not Respondent no.2 (Sunil) but one Neeraj s/o Mahinder Singh who was driving the offending vehicle at the time of

the accident. Said Neeraj was challaned for the offence punishable under Sections 279/338 IPC in addition to Section 3 read with Section 181 of the Motor Vehicles Act, 1988. It is urged that the report under Section 173 Cr.P.C. clearly proves that the driver, that is, Neeraj did not possess an effective driving licence to drive the vehicle at the time of accident. Thus, the Claims Tribunal ought to have exonerated or granted recovery rights to the Appellant.

4. I have the trial court record before me. In para 16 of the claim petition, the name of the driver was mentioned as Sunil, that is, Respondent no.2 herein and Respondent no.1 before the Claims Tribunal. Said Sunil filed a written statement admitting that he was driving the offending vehicle at the time of the accident but took the plea that Respondent No.1 attempted to suddenly cross the road. Although, he did apply brakes but the accident could not be averted. A perusal of the written statement filed by the Appellant Insurance Company reveals that the factum of driving of the vehicle by Respondent no.2 was not specifically or by necessary implication disputed.

5. Although the Appellant Insurance Company during the evidence sought to prove that the driver did not possess a driving licence, but it was only with regard to said Neeraj. It is well settled that whatever is not pleaded cannot be proved by any amount of evidence. Since the factum of driving of the offending vehicle by Respondent no.2 was not disputed, attested copy of the report under Section 173 Cr.P.C. placed on record by the appellant will be of no consequence. It is quite strange that in spite of no such case having

been pleaded by the Appellant Insurance Company that Neeraj was driving the offending vehicle at the time of the accident, the Claims Tribunal permitted evidence to be led by the Appellant Insurance Company.

6. In view of this, the Claims Tribunal rightly fastened the liability on the insurance company. The appeal, therefore, has to fail. The same is accordingly dismissed.

7. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 28, 2015

srb