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

+ MAC.APP. 524/2012

SHRIRAM GENERAL INSURANCE CO LTD Appellant
Through: Mr. K.L. Nandwani, Adv.

Versus

SARWAN & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.03.2015

1. None appears for either of the respondents; they are proceeded against *ex-parte*.
2. The counsel for the appellant has been heard.
3. The appeal impugns the award / judgment dated 8th February, 2012 in Suit No.136/2011 (Unique ID No.0240IC0169652011) in a claim petition filed by the respondent No.1 against the appellant and the respondents No.2&3. The Claims Tribunal has held the respondent No.1 entitled to compensation of Rs.6,39,620/- with interest @ 7.5% per annum from the date of the petition till realisation and upon failure to pay the said amount within one month, for interest @ 9% per annum from the date of petition. The appellant was directed to pay the amount with liberty to recover the same from the respondents No.2&3, being the owner and driver of the vehicle which was insured with the appellant.

4. The contention of the counsel for the appellant is that the Tribunal, inspite of a finding in para 11 of the impugned judgment / award of the subject vehicle being driven without a valid license, has still fastened the liability on the appellant. The only other contention is that the respondent No.1 claimed compensation for injury suffered while travelling in the vehicle insured with the appellant but which was a commercial goods carrier and not a passenger vehicle. Reliance, to support the first contention is placed on the judgment dated 10th January, 2012 of the Supreme Court in Civil Appeal No.231/2012 titled ***United India Insurance Co. Ltd. Vs. Sujata Arora*** holding that where the driver was either holding no licence or a fake licence, then it violates the terms and conditions of the insurance policy and no liability can be fastened on the Insurance Company. Reliance to support the second contention is placed on ***New India Assurance Co. Ltd. Vs. Vedwati*** (2007) 9 SCC 486 laying down that there is no provision of the Motor Vehicles Act, 1988 which enjoins any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor. Reliance is also placed on ***National Insurance Company Limited Vs. Prema Devi*** (2008) 5 SCC 403 where also the claimant was travelling in a goods carriage as a gratuitous passenger and it was held that the insurer is not liable and it will be open to the claimant to recover the amount from the owner of the offending vehicle.

5. On enquiry, the counsel for the appellant has fairly stated that as far as the first of the aforesaid judgments is concerned, there may be certain judgments taking contrary view also but the view with respect to the

passengers travelling in goods carriage / vehicle, as per his knowledge, is unanimous.

6. I have no reason to doubt the aforesaid statement of the counsel especially when the respondents have not chosen to contest the appeal. It appears that the respondent No.1 claimant, after receiving 50% of the awarded amount deposited by the appellant in this Court as a condition for stay of execution, is satisfied therewith.

7. The appeal accordingly succeeds and is allowed. The award / judgment of the Tribunal to the extent holding the appellant liable and directing the appellant to deposit the same is set aside.

8. A question however arises, whether the appellant is entitled to recover 50% of the amount already released in favour of the respondent No.1 from the respondent No.1. A perusal of the order dated 3rd October, 2013 vide which the said amount was ordered to be released to the claimant / respondent No.1 shows that the same was not subject to further order/s in this appeal. Even otherwise, in my opinion, it would be unjust to permit the appellant to recover the said amount from the respondent No.1. The appellant would be at liberty to recover the said amount from the respondents No.2&3.

9. The appeal is disposed of; the balance amount deposited by the appellant together with interest accrued thereon and the statutory amount deposited by the appellant in this Court be refunded to the appellant, after one month from today.

RAJIV SAHAI ENDLAW, J.

MARCH 13, 2015/bs..
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