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

% *Date of Decision : 04th August,2015*

\+ **MAC.APP. 461/2008**

ORIENTAL INSURANCE CO. LTD ..... Appellant
Through: Mr.S.M.Tripathi, Advocate.

versus

SHAKUNTALA DEVI & ORS ..... Respondents
Through: Mr.Shoumik Mazumdar, Advocate for Mr.Pankaj Seth, Advocate for R-10.
None for remaining respondents.

PRATIBHA RANI, J. (Oral)

CM No.11722/2008 (condonation of delay)

1. For the reasons stated in the application, the delay of 108 days in filing the appeal is condoned.

2. Application stands disposed of.

MAC.APP.No.461/2008

1. The appellant i.e. The Oriental Insurance Company Ltd. is aggrieved by the award dated 29.01.2008 passed by the learned Presiding Officer, MACT whereby compensation of ₹10,05,000/- (inclusive of interim award of ₹50,000/- passed on 18.03.2002) alongwith simple interest @ 9% per annum from the date of filing the petition, has been awarded to the legal heirs of deceased Shyam Singh. The appellant – Oriental Insurance Company Ltd. and respondent No.10 – New India Assurance Company Ltd. have been directed to pay the compensation in equal share.

2. Briefly stating, the facts of the case are that on 03.11.1999 at about 8.30 pm Sh.Shaym Singh was returning home from NOIDA on his Scooter

No.DAM 9353. When he reached near Road No.13 opposite SFS Flats, Jasola, his scooter was hit by truck bearing registration No.HR 38D 4196. Due to the impact, Shyam Singh fell down on the road alongwith his scooter and in the meanwhile, another truck bearing registration No.HR 47 4086 came from behind and overrun him. Sh.Shyam Singh succumbed to his injuries on the next day i.e. on 04.11.1999.

3. The truck bearing registration No.HR 38D 4196 was insured with Oriental Insurance Company Ltd., truck bearing registration No.HR 47 4086 was insured with New India Assurance Company Ltd.

4. A claim petition under Section 173 of The Motor Vehicles Act, 1988 was filed by the petitioner No.1 Smt. Shakuntala Devi – wife, petitioner No.2 Smt.Maya Devi – mother and petitioners No.3 to 7 namely Neeta, Balender, Jasvender, Bharti and Deepay – sons & daughters of deceased Shyam Singh seeking compensation for his death in the accident caused by offending vehicles i.e. truck bearing registration No.HR 38D 4196 and truck bearing registration No.HR 47 4086.

5. Vide impugned award dated 29.01.2008, a compensation of ₹10,05,000/- (inclusive of interim award of ₹50,000/- passed on 18.03.2002) alongwith simple interest @ 9% per annum from the date of filing the petition has been awarded to the legal heirs of deceased Shyam Singh and liability was fastened on the owners of both the offending vehicles i.e. truck bearing registration No.HR 38D 4196 and truck bearing registration No.HR 47 4086, involved in the accident and their respective insurance companies.

6. Aggrieved by the impugned award dated 29.01.2008, the appellant i.e. Oriental Insurance Company with which the offending vehicle i.e. truck bearing registration No.HR 38D 4196 was insured, filed the present appeal but now restricted the relief only to the extent of grant of recovery rights.

7. There is no appearance on behalf of respondents except respondent No.10 – The New India Assurance Company Ltd. which is a profoma respondent in this petition.

8. I have heard learned counsel for the appellant and carefully gone through the record.

9. Learned counsel for the appellant has submitted that in this case respondent No.6 (respondent No.12 herein) namely Madan Lal, who was driving truck bearing registration No.HR 38D 4196, was not having a valid driving licence. The fact that respondent No.6 was driving the offending vehicle i.e. truck bearing registration No.HR 38D 4196 without a valid driving licence was proved by the appellant by examining DTO, Karnal who testified that the licence held by respondent No.6 was not issued by Transport Authority, Karnal. Learned counsel for the appellant has further submitted that there was a breach of terms and conditions of the policy by the owner of the truck bearing registration No.HR 38D 4196, hence appellant should have been given recovery rights by the learned Tribunal.

10. I have considered the submissions made by learned counsel for the appellant. Perusal of the impugned order shows that while denying the recovery rights to the appellant i.e. Oriental Insurance Company Ltd., the learned Trial Court had considered not only the testimony of DTO, Karnal but also the testimony of the owner of truck bearing registration No.HR 38D 4196 examined by the Insurance Company and held as under:-

> *'………..On behalf of R-3 insurance company, a plea was taken that R-6 being the driver of truck No.HR 38D 4196 was not having the valid driving licence and one witness in that regard was produced from office of DTO Karnal, who has testified that driving licence of R-6, copy of which was provided to them, was not issued from their authority, however, another witness being owner and R-1 examined on behalf of R-3 insurance company had testified that he had seen the driving licence of R-6 at the*

time of engaging him as driver and had also taken the driving test and found R-6, an expert driver. Since the witness was produced by R-3 insurance company itself, his testimony is admissible as against R-3 insurance company and accordingly, I hold that both R-3 as well as R-4 are jointly liable to pay compensation to the petitioner under the award which may be passed in their favour.'

11. In the case of National Insurance Company Limited v. Swaran Singh & Ors. 2004 (3) SCC 297, it was held that to avoid its liability towards the insured insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time. It cannot be said that the Insurance Company has been able to discharge the onus of proving negligence on the owner's part.

12. In the case of United India Insurance Company Ltd. v. Lehru & Ors. 2003 (3) SCC 338, it was held by the Supreme Court that owner of a vehicle while hiring a driver is not expected to check the records of the licencing officer to satisfy himself that the driving licence is genuine. If the driver produces a driving licence which on the face of it looks genuine, the owner cannot said to be negligent. The relevant para of the report is extracted as under:-

"20. When an owner is hiring a driver he will therefore have to check whether the driver was a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he find that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them

is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skiandia's Sohan Lal Passi's and Kamla's cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

13. In the instance case, the evidence adduced before of the Tribunal that respondent No.1 namely Jagdev Singh Tyagi – owner of truck bearing registration No.HR 38D 4196 had not only seen the driving licence of R-6 namely Madan Lal at the time of his engagement as driver but had also taken the driving test of the driver to test his driving skills, is sufficient to establish that there was no negligence or breach of terms and conditions of the policy by the owner of offence vehicle i.e. truck bearing registration No.HR 38D 4196. Merely because, subsequently the licence was proved to be not issued by DTO, Karnal, in itself is not sufficient to grant recovery rights to the appellant.

14. Finding no illegality in the impugned award, the appeal is dismissed.

15. No costs.

CM No.11720/2008 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

AUGUST 04, 2015

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