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

Decided on: 13th April, 2015

\+ **MAC.APP. 508/2008**

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Manoj R. Sinha, Advocate

Versus

GYATRI DEVI & ORS. ..... Respondents

Through: Nemo.

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

G. P. MITTAL, J. ***(ORAL)***

1. By virtue of this appeal, the Appellant National Insurance company Limited seeks recovery rights in respect of amount of compensation of ₹5,20,000/- along with interest @ 7.5% per annum paid to Respondents no.1 to 5.

2. Along with the appeal, an Application (CM APPL.13769/2008) was also filed by the Appellant to lead additional evidence to prove that the driving licence possessed by the driver was fake. Respondent no.6, who is the owner of the vehicle bearing registration no.HR-63-2928 was served with the notice of the

appeal and the said Application.

3. Mr. Narender Gautam, Advocate appeared on behalf of Respondent no.6 on 06.01.2011, when the application for additional evidence to prove that the driving licence of the driver was fake, was allowed. It appears that thereafter, none appeared on behalf of Respondent no.6.

4. By way of additional evidence, Appellant examined Mr. Apurba Kumar Ghoria, an investigator who deposed that upon investigation, the driving lience Mark 'A' was found to be fake.

5. The Insurance Company also produced Mr. Tapan Kumar Mallik, RTO, Barasat, 24 Parganas (North), West Bengal as a witness.

6. This Court in its order dated 27.03.2014 concluded that the driving licence held by the driver was fake. Paras 1 to 4 of the order dated 27.03.2014 are extracted hereunder:-

> *"1. Pursuant to order dated 11.03.2014, Mr. Tapan Kumar Mallik, RTO, Barasat, 24- Parganas (North), West Bengal appeared in person withoriginal record of driving licence no. WB-25/065342.*
>
> *2. As per the Register, no licence was issued vide no. 065342. This court has seen the original*

> *Register wherein it is found that Sl. No.065342 and 065343 are blank pages and no licence was issued to anyone on these numbers.*
>
> *3. It proves that the driver of the offending vehicle was having forged licence.*
>
> *4. Original Register seen and returned to the abovementioned officer. His appearance is dispensed with in this matter.....”*

7. Respondent no.6 had sufficient notice to rebut the plea raised by the Appellant Insurance Company but he failed to do so. In view of the order dated 27.03.2014, it is held that the driving licence possessed by the driver was fake. Respondent no.6, the owner has also not come forward with any explanation as to how the vehicle bearing registration no.HR-63-2928, involved in the accident was handed over to the driver.

8. Consequently, the Appellant has successfully proved that there was conscious and wilful breach of the terms and conditions of the insurance policy on the part of Respondent no.6 (the owner).

9. It is well settled that once the insurer establishes a willful breach of the terms and conditions of the insurance policy on the part of insured, it shall have the right to recover the compensation paid to the victim/his legal representatives under

statutory liability. *(See: Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; Skandia Insurance Company Limited v. Kokilaben Chandravadan ,(1987) 2 SCC 654; and New India Assurance Co., Shimla v. Kamla and Ors., (2001) 4 SCC 342).*

10. In view of this, the appeal is allowed in above terms.

11. It is directed that the Appellant is entitled to recover the amount of compensation paid from Respondent no.6 in the execution of this very judgment.

12. Pending applications also stand disposed of.

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

(G.P. MITTAL)
JUDGE

APRIL 13, 2015
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