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

Date of decision: 25th March, 2015

+ **MAC.APP. 41/2012**

DELHI TRANSPORT CORPORATION & ANR..... Appellant

Through: Mr. J.N. Aggarwal, Adv.

versus

SMT KUSUM KUMARI & ORS Respondents

Through: Mr. J.P.N. Shahi, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. By virtue of this appeal, the Appellant Delhi Transport Corporation (DTC) impugns the judgment dated 11.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) to the extent it granted recovery rights against it.
2. It is urged by the learned counsel for the Appellant that DTC after examining the driving licence and before issuing an appointment letter imparts training to the drivers. If they (the drivers) are successful in the training only then the driver is employed.

3. It is also contended that DTC being a Public Sector Undertaking will never appoint a driver who is not competent to drive the motor vehicle, drive a bus or who does not possess a valid driving licence.
4. Referring to the Affidavit Ex.R3W1/1 of Shri Bhagwan, Assistant from National Insurance Company Limited, the learned counsel states that neither Satish Chand Sagar who allegedly visited the office of RTO, Firozabad nor any witness from RTO, Firozabad has proved that the driving licence No.4543/FZD/01 issued to the driver Ram Naresh Yadav son of Lila Dhar was fake.
5. No evidence was produced by the Appellant DTC to prove that the driving licence was perused by their officer/its agent. The same was accepted to be genuine. No evidence was produced with regard to alleged training or driving test.
6. In view of this, it cannot be said that DTC had given any training or taken any test of the driver before employing him. At the same time, evidence of Shri Bhagwan, Assistant from National Insurance Company Limited with regard to driving licence in question is only secondary evidence.
7. Admittedly, neither any witness was produced from the concerned Licensing Authority (RTO) nor even the investigator who had given a

report Ex.R3W1/3 was produce. The Claims Tribunal in the absence of the primary evidence could not have relied upon the report Ex.R3W1/3.

8. In view of this, the only conclusion that can be drawn is that Respondent no.5 Insurance Company failed to prove that the driving licence No.4543/FZD/01 held by driver Ram Naresh Yadav was fake. The impugned award to the extent it grants recovery rights against the Appellant, therefore, cannot be sustained; the same is accordingly set aside.
9. The appeal is allowed in above terms.
10. The award amount deposited by the Appellant DTC shall be refunded.
11. The statutory amount, if any, shall also be refunded to the Appellant DTC.
12. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 25, 2015
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