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

Date of Decision: 10th March, 2016

\+ **MAC.APP. 50/2010 & CM APPL. 1722/2010**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Arbaaz Hussain, Adv. for Mr. Shantha Devi Raman, Adv.

versus

KISHEN KUMAR GAUR & ORS ..... Respondents

Through: Mr. Naushad Ahmed Khan, Addl. Standing Counsel (Civil), GNCTD with Ms. Neelam Khohiya & Ms. Astha Nigam, Advs. for respondents.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 11.08.2009 on the claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act), registered as suit no. 602/2006, the motor accident claims tribunal (the tribunal) awarded compensation in the sum of ₹2,30,000/- with interest in favour of the first and second respondents on account of death of their son Karuna Gaur in a motor vehicular accident that had occurred on 18.06.2002 involving ambassador taxi bearing registration no.DL-1T-2951 (the offending vehicle),

admittedly insured against third party risk with appellant/insurance company.

2. The tribunal held Rajesh Kumar, third respondent herein (the driver of the offending vehicle) and Jagmohan, fourth respondent herein (the registered owner/insurer) in respect of the offending vehicle jointly and severally liable and called upon the insurer to pay the compensation. The insurance company has already satisfied the award by making the payment of the awarded compensation to the claimants. The only issue pressed in the appeal at hand concerns the non-consideration, and consequent denial, of plea for recovery rights against the owner on the ground that the vehicle was allowed to be driven by the driver who was not holding a valid or effective driving license.

3. It is noted that neither the owner nor the driver participated in the inquiry before the tribunal. There was no contest to the contentions raised by the insurer in the said proceedings. The tribunal's record shows that the insurance company had raised the issue of driving license and consequent breach of terms and conditions of the insurance policy, also by examining Jai Chand (R3W1), an official of the concerned transport authority and Navneet Chaudhary (R3W2), ADM of the insurance company to prove its case that there was no valid or effective licence held by the driver on the relevant date and that inspite of notices issued and served under Order 12 Rule-8 of the Code of Civil Procedure, 1908 (CPC), none was produced by the owner/driver.

4. It is found that the tribunal did not deal with the defences raised by the insurance company at all. The impugned judgment is conspicuously silent on this aspect which is not proper.

5. In the above facts and circumstances, the issue with regard to the breach of terms and conditions of the insurance policy and consequent claim of the recovery rights is remitted to the tribunal for proper inquiry and adjudication.

6. Needless to add, the insurer will be entitled to rely on the evidence already adduced and will also be permitted an opportunity to adduce further evidence, if any. Further, the parties which contest shall be allowed an opportunity to cross-examine the additional witness of the insurer and also an opportunity to lead evidence in rebuttal.

7. The parties are directed to appear before the tribunal for further proceedings in light of the above directions on 21st April, 2016.

8. The tribunal, after conclusion of the further inquiry hereby ordered, shall give clear findings on facts alleged and pass consequent order on the plea of the insurer.

9. The statutory deposit, if made, shall be refunded.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 10, 2016
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