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

Date of Decision: 19.05.2016

+ **MAC.APP. 95/2014**

M/S A G ENVIRO INFRA PROJECTS PVT LTD

..... Appellant
Through Mr. Ashok Popli and Mr. Sanjay,
Advs.

versus

KHUSHBU AND ORS

..... Respondent
Through Mr. A K Soni, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that occurred on 17.04.2008 involving motor vehicle bearing registration No.DL 1M 1854 (the offending vehicle). An accident claim case (MACP No.300A/08) was instituted on 09.09.2008 under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation for the injuries suffered by her. In the said case, it was alleged that the offending vehicle, owned by the appellant (owner), was driven by Vijay Kumar, second respondent (the driver) in a negligent manner thereby causing the accident, the offending vehicle having concededly been insured against third party risk for the period in question

with the third respondent (insurer) which was also impleaded as a party respondent before the tribunal. Upon inquiry, by judgment dated 26.10.2013, the motor accident claims tribunal (tribunal) upheld the case of the claimant that she had suffered injuries due to accident caused by negligent driving of the offending vehicle by the second respondent (driver). This finding has attained finality as it was not challenged.

2. The tribunal, by the aforementioned judgment, awarded compensation in the sum of ₹4,54,971/- with interest in favour of the claimant. While resisting the claim case, the insurer had taken the plea that the driver of the offending vehicle (the second respondent) was not holding a valid or effective driving license. The insurer led evidence by examining Ankit Jalan (R1W1), its Executive (Legal) who, in the course of his testimony, *inter alia*, proved the insurer having issued and served notices under Order 12 rule 8 under Code of Civil Procedure, 1908 (CPC) vide Ex.R1W1/2 on the driver and owner, the said notices having been sent by registered post as per postal receipts (Ex.R1W1/3 & 4). The certified copy of the insurance policy was also proved (as Ex.R1W1/1). As per the testimony of R1W1, neither the driver nor the owner had responded to the notices under Order 12 Rule 8 CPC (Ex.R1W1/2). The insurer also relied on the evidence of Harbans Singh Rai (R1W2), an official of the regional transport authority wherefrom a driving license bearing No.24281 dated 04.09.2005 purported to have been issued in favour of the second respondent as had been relied upon. The witness (R1W2) proved the said license was a fake document, no such license having been issued in the name of the second respondent.

3. On the basis of the above evidence, the tribunal held that the offending vehicle was driven at the relevant point of time by the second respondent who was not holding a valid or effective driving license. This was found to constitute breach of the terms and conditions of the insurance policy. Thus, the insurance company was directed to satisfy the award in favour of the claimant but granted recovery rights against the driver and owner.

4. The owner is in appeal questioning the above mentioned finding and consequent recovery rights granted to the insurer. It relies on the judgments in cases reported as *New India Assurance Co. Ltd. v. Ranbir Singh Shastri* 2012 ACJ 2510; *Siddharth Grover v. Dropti Devi I* (2013) ACC 706; *New India Assurance Co. Ltd. v. Narmati Subba II* (2013) ACC 277 and *Oriental Insurance Co. Ltd. v. B. S. Bhargav* 2013 ACJ 786. It contends that the insurance company had not taken a plea before the tribunal that there was a breach of terms and conditions of the insurance policy on account of the driving license. It refers to the notices under Order 12 Rule 8 CPC vide Ex.R1W1/3 to point out that what was demanded to be produced by the said notices was driving license in respect of a vehicle and not driving license in respect of the second respondent (the driver). It is the submission of the owner in appeal that the burden of proving that there was no driving license held by the second respondent was squarely placed on the insurer and that it has failed to discharge the same.

5. Having heard the counsel for the appellant and having gone through the tribunal's record, this Court finds all the above mentioned contentions to be devoid of substance.

6. It is not correct to contend that the insurance company had not taken a plea about the breach of terms of the insurance policy. The third preliminary objection in the reply to the claim petition, did refer to the need for a driving license to be shown, in absence of which the insurer could not be called upon to indemnify. It does appear that the language employed in the notices under Order 12 Rule 8 CPC sent to the driver and owner leave much to be desired. The insurer, if there was any need to issue such notices, should have demanded, by such notices, the driving license of the second respondent to be produced. There obviously cannot be a driving license vis-à-vis a motor vehicle. But, this will not save the day for the owner. As shown during the arguments by the counsel for the appellant himself, the owner had understood the notices under Order 12 Rule 8 CPC to the effect that the insurer was demanding the driving license of the driver of the offending vehicle as on the date of the accident. It also appears the tribunal erroneously assumed that there was no response to the notice under Order 12 Rule 8 CPC. The fact is, as deposed by Ankit Jalan (R1W1) in his affidavit (Ex.R1W1/8), that the owner in response to the said notice had sent copy of what purported to be a driving license of the second respondent which, upon verification, *inter alia*, on the basis of evidence collected from the office of R1W2, was found to be a fabricated document.

7. It is not a case where the owner had pleaded due diligence having been exercised at the time of engaging the driver on the offending vehicle. Here, after the accident, when served with the notice under Order 12 Rule 8 CPC, the owner placed in the hands of the insurer, copy of a document purporting to be a driving license of the second respondent which, upon

verification, was found to be fake and fabricated. The fact that the owner tried to explain away the need for a driving license by sharing a document which turned out to be a fake puts the onus even more heavily at his door. No evidence was led by the owner at the inquiry. There is nothing on record from which it could be inferred that the owner at the time of engaging the second respondent as driver had believed the aforementioned document to be a genuine one or it had exercised proper care and caution testing the capability of the driver for purposes of driving the offending vehicle. Therefore, the judgments cited at bar do not help the owner.

8. The appeal is unmerited and, therefore, dismissed.

9. The insurer is at liberty to enforce the recovery rights before the tribunal.

MAY 19, 2016
VLD

R.K. GAUBA
(JUDGE)