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

Date of Decision: 23.05.2016

+ **MAC.APP. 113/2014**

**BAJAJ ALLIANZ GENERAL INSURANCE
COMPANY LTD**

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

NARESH KUMAR GUPTA AND ORS

..... Respondents

Through: Mr. Ashish Mohan and Ms. Manpreet
Kaur, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 10.10.2013, the Motor Accident Claims Tribunal (tribunal) decided accident claim case (suit no.622/10) which had been instituted by the first respondent (claimant) on 19.01.2011 and upheld his contention that he had suffered injuries in a motor vehicular accident that took place on 20.02.2009 due to negligent driving of a motor vehicle described as a Dumper bearing registration no. UP-35H-1819 (offending vehicle). The said finding has since attained finality as it was not questioned further.

2. By the said judgment, the tribunal awarded compensation in the sum of Rs.19,40,000/- with interest in favour of the claimant directing the insurance company (insurer) to pay, it having concededly issued a third party risk insurance policy in respect of the offending vehicle for the period in question. The compensation was calculated thus :

Compensation for medical expenses	₹13,65,000/-
Compensation for conveyance	₹25,000/-
Compensation for special diet	₹25,000/-
Compensation for attendant charges	₹25,000/-
Compensation for permanent disability and loss of Income	₹2,00,000/-
Compensation for pain, sufferings and loss of amenities of life, disfiguration, etc.	₹3,00,000/-
TOTAL	₹19,40,000/-

3. It is noted that the insurer while contesting the case had also raised the issue of breach of the terms and conditions of the policy, particularly pointing out that no valid permit in respect of the offending vehicle had been produced inspite of notice served under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC). The tribunal rejected this contention of the insurer observing, *inter alia*, that no proof of service of the said notices had been furnished nor any witness from the transport authority examined and further that the plea was against the documents filed on record with the written statement of the driver and owner of the offending vehicle (second

and third respondents in appeal) which included copy of a permit, respecting which there had been no verification carried out by the insurer.

4. By the appeal at hand, the insurer questions the award of compensation on the ground that permanent physical impairment to the extent of 25% as assumed by the tribunal was wrong in as much as he was over 72 years in age and Dr. Ranjan Kumar Wadhwa (PW-9) in the course of his testimony had conceded that the “claimant can perform his day-to-day activities in a normal manner”. The insurer further questions the award of non-pecuniary damages in the sum of Rs.3 Lakhs towards pain, suffering, loss of amenities of life and disfiguration, etc. stating that it is too high.

5. Having heard the counsel and having gone through the tribunal’s record, the exception taken to the compensation awarded by the tribunal is found to be frivolous. The claimant had proved by cogent evidence that he had suffered disability on account of grievous hurt in the spinal region. The medical opinion indicated his disability to be permanent, though non progressive, but 25% in relation to the spine region. Looking at the age at which the said disability was suffered, the assessment made on this account by the tribunal cannot be faulted. For the same reasons, the award under the non-pecuniary heads of damages is also found to be appropriate and, thus, calling for no interference.

6. The plea of the insurance company about breach of the terms and conditions of the insurance policy on account of the permit was considered and rejected by the tribunal thus :

“..19. The learned counsel for the R-3/Insurance Company has argued that Insurance Company is not liable to pay the compensation for the reason that there is breach of the terms of the insurance policy as the offending vehicle i.e. (Dumper) bearing registration no.UP-35-H-1819 as being driven on the date of accident without any valid permit and has relied upon the statement of R3W-1, Ms. Seema Sehrawat, Sr. Executive (Legal), M/s.Bajaj Allianz General Insurance Company Ltd. who has proved the insurance policy of the offending vehicle as Ex. R3W1/1 and has deposed that notice u/o. 12 Rule 8 CPC, Ex. R3W1/2 was issued to the insured, Shri. Arun Awasthi for production of permit of the vehicle bearing registration no.UP-35-H-1819 (Dumper) but neither any reply nor any permit has been received till date and hence the insurance company is not liable to pay compensation. However, no document regarding delivery / receipt of the said notice under Order 12 Rule 8 CPC has been filed on record nor any acknowledgement of the same has been filed by R-3/Insurance Company to prove that the said notices had been duly received by the insured/ owner of the offending vehicle. I also note that copies of the insurance policy, permit, fitness and registration certificate of the dumper truck No.UP-35H-1819 have been filed alongwith the written statement of respondents no.1 and 2 but the respondent no.3/insurance company has not cared to get the same verified from the concerned transport authority. Neither any witness from the concerned transport authority has been got examined to prove any breach of the terms of the insurance policy. In these circumstances, the respondent no.3/Insurance Company has failed to establish that the owner / insured is guilty of any deliberate or willful breach of terms of the insurance policy or that the offending vehicle was being driven without any valid permit and cannot avoid its liability to indemnify the respondent no.2/owner of the offending vehicle..”

7. Clearly, the tribunal has misread the evidence and not appreciated the contention of the insurer properly. The insurer had taken a specific defence namely that the vehicle was not holding a valid permit. The insurer had

proved the despatch of notices under Order 12 Rule 8 CPC by post. There was no contest to the evidence to this effect. In these facts and circumstances, the delivery in due course of postal transit should have been inferred. The driver and owner of the offending vehicle were well aware that in order to avail the benefit of the indemnity clause under the insurance policy, in the face of defences taken, they were required to show not only that the driver was holding a valid or effective driving licence but also that the vehicle was brought on road in strict compliance with the requirements of the Motor Vehicles Act and Rules framed thereunder which would include the necessity of a permit. The tribunal failed to note that the documents filed with the written statement though included copy of a permit but the said document was valid from 06.05.2009. The accident having occurred on 20.02.2009, the said permit could not have been referred so as to absolve the owner of his responsibility.

8. Thus, the appeal of the insurance company against rejection of its plea as to the breach of the terms and conditions of the insurance policy must be allowed. In the result, the appeal is partly allowed. The insurance company is granted recovery rights against the driver and owner of the offending vehicle.

9. By order dated 04.02.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest within the period specified and, out of the said deposit, 50% was allowed to be released, the balance kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch, New Delhi. The balance shall also be released to the

claimant in terms of the impugned judgment. For enforcement of recovery rights, the insurer may take out appropriate proceedings before the tribunal.

10. Statutory deposit, if made, shall be refunded.

11. The appeal is disposed of in above terms.

MAY 23, 2016

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(R.K. GAUBA)
JUDGE