

\$~R-127

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

Date of Decision: 31.05.2016

+ **MAC.APP. 83/2008**

PARAMJIT SINGH

..... Appellant

Through None

versus

NEW INDIA INSURANCE CO. LTD. AND ORS.

..... Respondents

Through Mr. Pankaj Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The motor accident claims tribunal (tribunal) decided an accident claim case (suit No.452/06, old No.810/99) which had been instituted by the third to sixth respondents (claimants) on 26.11.1999 seeking compensation for death of Bijender Singh in a motor vehicular accident that occurred on 11.05.1999 due to negligent driving of the vehicle bearing registration No.DL 1G 7977 (offending vehicle). The offending vehicle was insured against third party risk for the period in question with New India Insurance Co. Ltd. (insurer). It was owned by the appellant and concededly driven by Shiv Dhan (second respondent) at the time of the accident. The tribunal held by the impugned judgment that the accident leading to the death had occurred due to negligent driving of the offending vehicle and held the said

driver, and the appellant, jointly and severally liable to pay compensation which was awarded in the sum of ₹5,37,600/- with interest.

2. During the contest before the tribunal, the insurance company (first respondent) had taken the plea that there was a breach of terms and conditions of the insurance policy as the driver (second respondent) was not holding a valid or effective driving license. Evidence in this regard was led wherein the insurance company examined, amongst others, the driver Shiv Dhan himself (R3W1).

3. The evidence brought out, as was noted by the tribunal against third issue (internal pages 16 to 23 of the impugned judgment) that the driver did hold a valid and effective driving license for the period 14.02.1996 to 13.02.1999 and thereafter another valid driving license for the period 23.12.1999 and 22.12.2002. On this basis, the tribunal concluded that the driver was not holding a valid and effective driving license for the period 13.02.1999 to 23.12.1999, the said period covering the date of accident (11.05.1999). On such conclusions the plea of the insurance company about breach of terms and conditions of the policy was upheld and it was granted recovery rights against the appellant.

4. By order dated 11.02.2008, notice was issued to and accepted on behalf of the insurance company. By order dated 30.04.2008, the appeal was admitted and directed to be shown in the category of regular matters, to come up on its own turn. Though it was dismissed in default on 12.01.2009, on application later moved, the appeal and the interim protection granted by order dated 11.02.2008 were restored on 28.04.2009. None appeared on

either side on the last date when the matter was taken up. Today none has appeared for the appellant in spite of calls.

5. The learned counsel for the insurance company has been heard.

6. The breach on account of which the insurance company's plea for recovery rights was granted cannot be said to be a fundamental breach or to have contributed to the cause for accident. In the facts and circumstances, the appeal deserves to be allowed merely with reference to the observations of the Supreme Court in para 110 in the judgment reported as *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297 :

“ Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

7. Thus, the recovery rights granted against the appellant are set aside.

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

9. The appeal is disposed of in above terms.

10. A copy of this judgment shall be sent by the registry to the claimants and the insurance company.

(R.K. GAUBA)
JUDGE

MAY 31, 2016/VLD