

\$~R-137

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

Date of Decision: 01.06.2016

+ **MAC.APP. 119/2008**

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

KARAM CHAND KAPLA & ORS. Respondents
Through: None .

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sanjeev Kumar died in a motor vehicular accident that occurred on 15.01.1996 involving negligent driving of truck bearing No. HR 38 9475 (offending vehicle) statedly driven by the third respondent, it being owned by the fourth respondent herein. The parents of the deceased (first and second respondents) instituted an accident claim case (Petition No. 366/1996) on 02.05.1996), seeking compensation under Section 166 of Motor Vehicles Act, 1988 (MV Act) impleading the appellant insurance company (insurer) as a party respondent.

2. The tribunal, after inquiry, by judgment dated 27.10.2007, upheld the case of the claimants about death having occurred due to negligent driving of the offending vehicle holding the third and fourth respondents herein jointly and severally liable to pay. Compensation was awarded in the sum

of ₹ 1,35,400/- with interest @ 9% per annum and the liability was fastened on the insurance company. In the course of inquiry, the insurance company took the plea that there was no valid or effective insurance policy for covering the period of the accident, it relying on copy of the cover note (Ex.R3W1/6) which indicated the time of its issuance to be 5.30 p.m. on 15.1.1996. This plea was rejected by the tribunal on the basis of following reasoning:-

“R-3 insurance company has claimed that company is not liable for any award, if any, passed in favour of the petitioner on the ground that accident took place on 15.01.96 at about 5.20 p.m. whereas policy was taken at about 5.30 p.m. as mentioned in the registered cover, copy of which is Ex.PW1/6. R3W1 Pradeep Kumar Gupta, Branch Manager with New India Assurance Company has proved certified copy of cover note Ex.R3W1/6 and also copy of policy Ex.R3W1/7. There is a reference of the time in the cover note, copy of which is Ex.R3W1/6 but on viewing by naked eyes, it cannot be said with certainty that time mentioned is 5.30 p.m. and this is particularly when R3W1 is stating in his cross-examination that he had not brought the official copy of the cover note and despite suggestion that there is interpolation in the time given in the cover note and despite admitting that time was not mentioned in the policy, the original cover note has not been produced by the insurance company. Since there is no time mentioned in the insurance policy and original cover note is not being produced, I hold that insurance policy was in force at the time of the accident i.e. on 15.01.96 at about 5.30 p.m. and as such R-3 insurance company is liable to indemnify R-2, owner of the vehicle.”

3. By appeal at hand, the insurer reiterates that there was no insurance policy existing at the time of the accident and, thus, its plea should have been accepted.
4. Having regard to the reasons set out by the tribunal in rejecting the above contention, as quoted above, and in the face of the documents and evidence on record which bear out the same, the view taken by the tribunal cannot be faulted. Thus, the appeal is found to be unmerited and liable to be dismissed.
5. By order dated 22.01.2009, the appellant was directed to deposit the entire awarded amount within the period specified which was initially kept in fixed deposit receipt for a period of six months. On 13.05.2009, it was submitted on behalf of the appellant that the claimants had already recovered the amount through execution proceedings and, thus, the application for stay had become infructuous. Thus, no further directions are required.
6. Statutory amount, if deposited, shall be refunded
7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

JUNE 01, 2016/nk