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

Date of Decision: 03.05. 2016

+ **MAC.APP. 295/2013**

WAKIL KHAN

..... Appellant

Through: Mr.Ravi Mehta, Adv.

versus

THE NEW INDIA ASSURANCE CO. LTD. & ORS.

..... Respondents

Through: Mr.P.Acharya with Mr. Sameer
Nandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Baby Santosh, child of the second respondent (the claimant) had died in motor vehicle accident that occurred on 29.04.2007 involving negligent driving of a truck bearing number UP-13C-5711 (offending vehicle) statedly driven by the third respondent Mohd. Hasrat (the driver). The offending vehicle is admittedly registered in the name of the appellant who was impleaded as second respondent before the tribunal, it having been insured against third party risk with the first respondent (insurer). The second respondent with his wife Veera instituted an accident claim case (MACT Suit No. 132/2009) on 23.07.2007 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) impleading the appellants (the driver and insurer of the offending vehicle).

2. The Tribunal by judgment dated 23.12.2009 upheld the case of death having occurred due to negligent driving of the appellant/driver and accorded compensation in favour of the claimants.

3. The insurer had taken the plea that there was a breach of terms and conditions of insurance policy as the driver was not holding a valid or effective driving licence. It appears from the record that the insurer had issued notice under Order 12 Rule 8 of Code of Civil Procedure 1908 (CPC), *inter alia*, to the appellant and its driver sent by registered A.D. post but there was no response. In spite of notice, no evidence was led before the Tribunal either by the appellant or the driver, they having filed a joint written statement only to deny the involvement of the offending vehicle. The Tribunal upheld the contentions of the insurer that no driving licence or permit had been shown, and, therefore, there was a breach of terms and conditions of the insurance policy. On that basis, the insurance company, which was called upon to satisfy the award has been given recovery rights against the second owner.

4. By the appeal at hand, the appellant points out that a driving licence had been handed over to the Investigating Officer of police station Gokulpuri, Delhi which had registered the First Information Report (FIR) No. 291/2007 respecting the accident in question, the documents pertaining thereto (Ex.P-1 collectively) having been submitted by the SHO police station Gokulpuri. Indeed, the said documents submitted to SHO police station Gokulpuri include (at page 105 of the Tribunal's record) a driving licence purportedly issued in favour of the driver Mohd. Hasrat on 24.04.2001 by the licencing authority at Bulandsehar, U.P., it having been renewed on 03.09.2005 upto 02.09.2008; covering the date of accident,

being valid for heavy transport vehicle (HTV).

5. Confronted with the said document, the counsel for the insurer submits that the genuineness of this document has not been proved. The submission seems to be correct. The owner having been served with the notice under Order 12 Rule 8 CPC was duty bound to respond. He was aware that the insurer had raised the issue of driving licence before the Tribunal. Yet, no response was sent to the notice under Order 12 Rule 8 CPC nor any evidence has been led before the Tribunal. Mere handing-over of copy of a document, purportedly a driving licence, to the police officer would not suffice, particularly when investigating police does not seem to have checked the genuineness or otherwise of the same.

6. In these facts and circumstances, as now requested, the appellant deserves to be granted another opportunity to prove that the driver held a valid and effective licence in respect of the offending vehicle on the date of the accident. In this view, the recovery rights are set aside. The limited issue arising out of the plea of the insurer respecting breach of terms and conditions of the policy on account of the driving licence is remitted to the Tribunal for further enquiry and fresh adjudication.

7. It is made clear that in such further enquiry it shall be the onus of the appellant (owner of the offending vehicle) to prove the fact that the driver held a valid and effective driving licence. The witnesses examined in this regard shall be tendered for cross-examination to the parties which contest which also shall be entitled to lead evidence in rebuttal, if any.

8. The parties are directed to appear before the Tribunal on 03.06.2016 for further proceedings.

9. The statutory amount deposited by the appellant shall not presently be

refunded. It shall continue to be held till decision is taken afresh by the Tribunal on the above issue. If the Tribunal were to conclude that a valid and effective driving licence was held by the driver, it would be at liberty to direct refund of the statutory amount deposited by the appellant under Section 173 of the M.V. Act. Conversely, if the decision is against the contention of the appellant, the Tribunal will be at liberty to revive recovery rights in favour of the insurer.

10. The appeal is disposed of in the above terms.

MAY 03, 2016
mr



R.K. GAUBA
(JUDGE)