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

Date of Decision: 17th May, 2016

+ **MAC.APP. 307/2013 with CM no.5484/2013 (stay)**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. L. K. Tyagi, Adv.

versus

AMIR KHAN

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 19.12.2012, passed in an accident claim case (suit no.229/2012) of the first respondent (the claimant), the appellant/insurance company (the insurer) has been burdened with liability to pay the compensation to the latter in the sum of ₹78,968/- with interest for the injuries suffered by him due to negligent driving of a motor vehicle described as motorcycle bearing registration no.DL-7SSS-5974 (the offending vehicle) on 08.03.2012. Admittedly, on the date of accident the offending vehicle was registered in the name of the appellant company.

2. It is admitted case of the appellant that the offending vehicle was subject to comprehensive insurance taken out by its erstwhile registered owner from the appellant company. It was stolen from the possession of the

said earlier owner on 13.09.2005 and on the own-damage claim lodged by him, the compensation due on account of theft was paid by the appellant to him on 11.04.2007 whereafter the title to the offending vehicle was transferred in its name, it consequently having become its registered owner.

3. The offending vehicle was stolen in 2005 and remained unrecovered on 08.03.2012. The said vehicle was involved in the accident giving rise to the cause of action in favour of the first respondent, the identity of the person driving at that point of time still not having been discovered. The claim case of the first respondent, thus, was filed and directed against the appellant company on the plea that it is the registered owner of the said vehicle and, therefore, liable to pay the compensation. The claim was resisted by the insurance company on the ground that the actual physical possession of the vehicle was never received by it and, thus, the person who was driving it at the time of accident could not be said to be a person authorized by the registered owner.

4. In appeal, the insurance company presses in aid the view taken by the Supreme Court in *Eshwarappa @ Maheshwarappa vs. C. S. Suri*, (2010) 8 SCC 620 and by learned single judges of High Court of Judicature at Allahabad and High Court of Judicature at Madras in cases reported as *State of Uttar Pradesh v. Deveshwar Prasad*, 1983 ACJ 646 and *New India Assurance Co. Ltd. v. Selvarajamani and Ors.*, 1998 ACJ 547.

5. This court has considered the submission made but finds no merit in the appeal. In sharp contrast of three cases cited at bar where the accident had occurred on the close heels of the theft of the vehicle, clearly by a person not authorized by the registered owner of the offending vehicle, in

case at hand, the appellant had become the registered owner of the offending vehicle admittedly on 11.04.2007. It was well within its knowledge that the vehicle had been stolen and still not been recovered and, thus, there was all likelihood that it was in use and control of the thief or a person to whom the thief may have transferred it. Yet, the appellant/insurance company, having acquired title over the offending vehicle, took no steps to report the fact to registering authority or to get the registration of the offending vehicle cancelled or suspended in terms of Sections 48(6), 53 and 62 of the M.V. Act. The continuance of the ownership of the insurance company in the vehicle, thus, carried with it a responsibility for its use or abuse. In these circumstances, the insurance company cannot get away on the plea that the person who was driving the vehicle had no authority.

6. The appeal (with application) is, thus, dismissed.

7. The appellant is directed to satisfy the award by requisite deposit with the tribunal. The statutory deposit shall be refunded by the registry only after confirmation that the award has been satisfied.

**R.K. GAUBA
(JUDGE)**

MAY 17, 2016
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