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

Date of Decision: 18th March, 2016

\+ **FAO 133/2012**

SUKHBIR SINGH RANDHAWA ..... Appellant

Through: Mr. Pushkar Sood & Mr. Rakesh Sareer, Advs.

versus

NATIONAL INSURANCE COMPANY & ORS ..... Respondents

Through: Mr. Shoumik Mazumdar, Adv.for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The third respondent (Mohan Singh) had suffered injuries in a motor vehicular accident that occurred on 26.03.2007 statedly involving a motor vehicle described as tanker bearing registration no.DL-1GB-5935 (the offending vehicle). He filed an accident claim case before the motor accident claims tribunal (the tribunal), where it was registered as MACT claim petition no.295/2008 (2007) on 07.05.2007. In the said case, the appellant herein (Sukhbir Singh Randhawa) was impleaded as second respondent, he being the registered owner of the offending vehicle, in addition to Manoj Rai (driver) and National Insurance Co. Ltd. (the insurer). Both appellant and the driver (now second respondent) did not appear

inspite of service of notice before the tribunal and suffered the proceedings *exparte*. The insurer (first respondent before this court) during the course of inquiry took the plea that its investigation had revealed that the driver was not holding a valid or effective driving license. It appears that the insurer also claimed that it had issued a notice under Order 12 Rule-8 of the Code of Civil Procedure, 1908 (CPC) to the driver and the owner to produce necessary document including driving license but there was no response. The tribunal by judgment dated 06.04.2010, *exparte* in so far as the appellant is concerned, whilst granting compensation in the sum of ₹10,11,000/- with interest at the rate of nine (9) percent per annum from the date of filing of the petition till realization in favour of the third respondent (the claimant), upheld the contention of the insurer about breach of terms and conditions of the policy for the reason, no valid or effective license was shown to be in possession of the driver and, thus, while directing the insurance company to pay compensation, granted it recovery rights.

2. When the insurer, having paid the compensation to the claimant, took out execution proceedings (execution case no.13/2011), the appellant moved an application under Order 9 Rule-13 CPC. The said application was considered but dismissed vide order dated 24.02.2012, only on the basis of the pleadings. It is noted that the appellant herein had claimed that he had shifted residence prior to the date on which the petition was filed and, thus, had no notice. The tribunal did not consider it necessary to put the said averment on trial by framing any issue or giving any opportunity to appellant to prove his contentions.

3. By the appeal at hand, the order dated 24.02.2012 passed on application under Order 9 Rule-13 CPC has been challenged.

4. The fact remains that the appellant had suffered proceedings before the tribunal on the claim petition, *exparte*. The basic ground on which the recovery right has been granted is the plea of the insurer that there was no effective or valid driving licence. The appellant claims to the contrary. He had submitted before the tribunal a copy of driving license of Mohan Rai (the driver) issued on 01.08.1999 and valid for the date of the accident (page 175 of the tribunal's record) on which basis he claimed that there was no breach of terms and conditions of the insurance policy. This document, if true and genuine, would indeed mean the plea of the insurer about the breach of terms and conditions of the insurance policy could not have been accepted.

5. In these circumstances, instead of allowing the appeal to upset the order under Order 9 Rule-13 CPC only to reopen the proceedings arising out of the claim petition, proper course would be to remit the short inquiry into the genuineness of the claim about the driving license to the tribunal. Ordered accordingly. The appellant and the insurer are directed to appear before the tribunal for further proceedings on 28th April, 2016.

6. The only issue to be addressed by the tribunal in the said inquiry would be as to whether the driving license, copy of which has been submitted by the appellant, is genuine or not. If it is a genuine document, the tribunal would be within its power and jurisdiction to vacate the direction about recovery rights. Conversely, if the said claim is found to be incorrect and false, the tribunal will enforce the recovery rights, also

considering the expediency of taking criminal action against the appellant for relying on a fabricated document.

7. By order dated 23.03.2012, the enforcement of the recovery rights was stayed subject to the appellant depositing fifty percent of the awarded amount with interest with the executing court. The said amount is stated to be lying in an FDR with the tribunal. It shall continue to be retained by the tribunal during the limited inquiry hereby remitted and utilized for satisfying the claim of the insurance company or refund to the appellant as the case may be.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 18, 2016
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