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

Date of Decision: 10th March, 2016

+ **MAC.APP. 218/2010**

NATIONAL INSURANCE COMPANY LTD Appellant

Through: Mr. Manoj Ranjan Sinha & Ms.
Arpita Kumari, Advs.

versus

JAGRAM & ORS Respondents

Through: Mr. Navneet Goyal, Adv. for LR's of
R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Jag Ram, then aged 86 years, first respondent, since deceased and represented by his legal heirs, suffered injuries in a motor vehicular accident that occurred on 31.03.2006 on being hit by a car bearing registration no.DL-9CD-3204 (the car). He preferred a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) on 31.01.2010 whereupon it was registered as suit no. 340/2006. The car was admittedly insured against third party risk with the appellant company (insurer) for the period in question, it

having been impleaded as party respondent in addition to the driver (Avinash Jha) and the owner (Anil Kumar Aggarwal) of the car.

2. It appears that the driver did not contest the claim petition. The insurance company while admitting its liability to indemnify took up the defence that there had been breach of terms and conditions of the insurance policy as the driver was not holding a valid or effective licence.

3. The tribunal awarded compensation in the sum of ₹1,61,200/- with interest in favour of the claimant, the said amount being inclusive of medical expenses to the tune of ₹1,22,200/-. The defence taken by the insurance company based, *inter-alia*, on the evidence of Dinesh Kumar Sikka (R2W1) was, however, rejected and it was called upon to make the payment in terms of the indemnity clause.

4. The insurer in its appeal has raised primarily two questions.

5. First plea is that Shiv Charan, son of the claimant who appeared as PW2 during the inquiry had admitted that he had received reimbursement of the medical expenditure in the sum of ₹1,22,200/- from his employer in terms of the health benefit scheme to which he was entitled. The contention of insurance company is that the tribunal had wrongly declined to discount the effect of the said imbursement by placing reliance on *Dr. A. C. Mehra vs. Behari Lal & Anr.*, I (1997) ACC 657, *Oriental Insurance Company vs. K. P. Kapur*, I (1997) ACC 138 & *Raghubir Singh vs. Harbans Kaur & Ors.*, 1985 ACJ 676. It is argued that in view of the law laid down by the Supreme Court in *United Insurance Co. Ltd. vs. Patricia Jean Mahajan*, AIR 2002 SC 2607, followed by a learned single judge of this court in

Jaswant Kaur Sethi vs. Tamal Das & Ors. in MAC appeal no.352/2006 decided on 26.10.2009 and another *National Insurance Co. Ltd. vs. Deepmala Goel & Ors.*, 2013 ACJ 2382, the claimant could not have enjoyed double benefit and that amount already received by way of reimbursement cannot be treated as expenditure incurred so as to claim it to be paid yet again by the insurance company.

6. The second contention of the insurance company is that the evidence adduced with regard to the plea that the driver was not holding a valid driving license has been wrongly rejected since it clearly showed that the owner/insured of the offending vehicle had not exercised due diligence in handing over the motor vehicle to a person who was admittedly not competent or qualified to drive.

7. Having heard arguments and gone through the record, this court finds substance in both the submissions of the insurance company.

8. Indeed, in view of the law laid down by the Supreme Court in *Patricia Jean Mahajan* (supra), which has been followed by the learned single judge of this court in cases of *Jaswant Kaur Sethi* (supra) and *Deepmala Goel* (supra), the judgments in the three cases cited by the tribunal cannot be taken as good law. The amount of ₹1,22,200/- had already been received as reimbursement by the claimant through his son. In these circumstances, the said very amount could not have been claimed again in the claim petition. The award to that extent, thus, will have to be set aside. In these circumstances, the award in the present case will have to be restricted to ₹39,000/- only.

9. The insurance company through its witness R2W1 had proved the fact that the driver of the offending car was not holding valid driving license. The evidence was also brought in to show that he was prosecuted for the offence punishable under Section 3 read with Section 181 of the MV Act by the police. The insurance company had issued a notice under Order 12 Rule-8 of the Code of Civil Procedure, 1908 (CPC) to the owner/insured but there was no response.

10. The owner joined issue by examining himself in defence (as R1W1) on the strength of his own affidavit (Ex.R1W1). He was cross-examined on the said affidavit. His contention was that he had taken the car to his office and had parked it at the appropriate parking place and handed over the keys to the driver, engaged as watchman by the employer company. He himself is on record to state that the purpose of handing over the keys of the car to the watchman was to adjust the motor vehicle in the parking. Thus, while handing over control of the motor vehicle, the owner had admittedly permitted him to be at the driving seat and drive it *albeit* for adjustment of the vehicle in the parking space. During his cross-examination, he conceded that he would not know if the driver had the necessary skill to drive the motor vehicle or not, or whether he was holding a driving licence at the time of accident. The evidence on record shows that the accident had occurred not in the parking place but on the public road, rather in the middle of a busy thoroughfare.

11. It is, thus, vivid that the owner/insured of the car had not exercised due diligence while handing over the car to the driver in the manner stated.

12. In the foregoing facts and circumstances, a case of breach of terms and conditions of the insurance policy has been made out. The tribunal did not appreciate the evidence correctly and, thus, committed an error in denying the recovery rights to the insurance company.

13. The appeal is consequently allowed.

14. The amount of compensation is reduced to ₹39,000/-, though with interest as levied by the tribunal. The insurance company has already deposited the said amount of money with the tribunal in terms of the direction in orders dated 12.04.2010 read with order dated 11.05.2010. It is granted rights to recover the amount thus deposited by taking out appropriate proceedings before the tribunal against the second respondent (Anil Kumar Aggarwal), the registered owner/insured in respect of the car.

15. As mentioned earlier, the original claimant has since died. His four sons and two daughters were substituted in his place during the pendency of this appeal. The amount lying in deposit with the tribunal shall be equally apportioned amongst them and released accordingly on they moving appropriate applications supported by their respective proof of identity.

16. The statutory deposit, if made, shall be refunded.

17. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 10, 2016
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