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

Date of Decision: 18th March, 2016

+ **MAC.APP. 526/2011 & CM APPL. 11044/2011**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pradeep Gaur & Mr. Amit Gaur, Advs.

versus

MUKESH KUMAR & ORS ..... Respondents

Through: Mr. L. K. Tyagi, Adv. for R-7.
Mr. R. D. Sharma, Mr. Rajat Sharma & Mr. Chetan Sharma, Advs. for R-8 & 10.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 12.09.2000, a motor vehicular accident occurred involving two vehicles, one being a private deluxe bus bearing registration no.DL-1PA-4340 (the bus) and the other vehicle described as tanker bearing registration no.DL-1GA-5948 (the tanker). Whilst the bus was carrying certain passengers including Sureksha Rani, the unrebutted pleadings and evidence on record show that the tanker was carrying air-fuel. The accident resulted in death of Sureksha Rani. Her dependant family members (first to fifth respondents herein), collectively called the claimants, brought an accident claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) on 19.01.2002. The claim petition appears to have been

decided initially by judgment dated 13.01.2006 but proceedings were later revived and inquiry conducted afresh wherein the owner as well as the registered owner (at the time of the accident) of the tanker were impleaded, (as eighth and tenth respondents herein). The appellant/insurance company (the insurer) being the insurer of the tanker at the time of the accident was also impleaded amongst the party respondents before the tribunal. Noticeably, inspite of notice, both the owner as well as registered owner of the tanker, impleaded as third and fifth respondents in the claim petition, chose to suffer the proceedings *ex-parte*.

2. During the inquiry, while resisting the claim, the appellant/insurance company took the plea that its investigation had shown that the driver of the tanker namely Ram Murat, who had also died in the accident, was not holding valid or effective driving license meant for the motor vehicle in the nature of tanker carrying hazardous goods, referring in this context to the provision contained in the proviso to sub-Section 2 of Section 14 of the MV Act read with Rules 9 and 132 of the Central Motor Vehicles Rules, 1989 framed thereunder.

3. The tribunal while allowing the claim petition awarding compensation in the sum of ₹2,07,000/- in favour of the claimants directed apportionment fixing the liability on the part of the appellant/insurance company (the insurer of the tanker) to the extent of 50%, asking it to pay the said amount to the claimants. By judgment dated 03.01.2011, the tribunal declined to grant recovery rights against the fifth respondent before the tribunal i.e. M/s Tayal Oil Solvent & Chemicals (now tenth respondent before this court). In

rejecting the claim of the insurance company to above effect, the tribunal dealt with the contentions as under:-

> "*R6W2 Sh.Mahesh Kumar, Jr.Clerk ARTO Office, Sulantpur, U.P has deposed that he has brought the register with respect to D/L no.1148/STR/98 which is maintained by their office and as per the record, the above D/L was issued in the name of Sh.Ram Murat i.e. driver of the offending vehicle. The D/L no.1148/STR/98 refected in their register is a renewal of old licence and he is not aware as to from where the original licence was issued as it is not mentioned in their register and as per his record, the licencee is not authorized to drive a vehicle meant to carry hazardous goods. As per their record, the licence holder has never applied for licence for carrying hazardous goods.*
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> *R6W3 Sh.Dharamvir Singh has deposed that he has brought the summoned register containing entries with respect to the certificates issued from their office regarding the Training imparted to the driver with respect to D/L meant for carrying hazardous goods. He has deposed that as per the record being maintained in their office, the training certificate no.162 is in the name of Jeet Singh s/o Narayan Singh and not in the name of Ram Murat. He has further deposed that mark A showing certificate filed by the respondent purportedly to be training certificate of Ram Murat is forged one. None of these three witnesses as brought by the respondent no.6 were cross examined by the petitioners or by respondent no.3 or by respondent no.5.*
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> *As per the cover note Ex. R6W1/A as filed in the court, the word 'hazardous goods' has not been mentioned in the said policy and what is written in the said policy with respect to driving clause is as follows:*
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> *"Any person including insured: Provided that a person driving holds and effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that a person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989".*

No doubt the respondent no.6 has placed one certificate on the court record to the effect that Ram Murat, the driver of the tanker had undergone a training from Murthal District Sonepat from Government Training School, Murthal, Sonepat to demonstrate that the driver had undergone a training to drive vehicle with hazardous goods (and this certificate as per testimony of R6W3 has been proved to be forged). R6W2 has proved the fact that the said Ram Murat was having valid D/L with him. The fact, therefore, remains as to whether the vehicle i.e. .tanker was carrying hazardous goods and if the answer comes in affirmative then as to whether the driver was having a licence to drive such vehicle and this would revolve around the fact as to what are the hazardous goods. In the definition clause of Motor Vehicles Act, the word 'hazardous goods' have not been defined. Even otherwise none of the witnesses have turned up to depose either from the respondent no.5 or respondent no.6 that the vehicle was carrying oil, petrol or such other inflammable articles. The court could only gather from newspaper cutting filed on court record that the vehicle was carrying oil/lubricant. Which oil or lubricant it was carrying or upto which extent it was hazardous goods has not been explained on record by any of the witnesses. The court is of the opinion that per-se that it was an oil tanker, it can not be presumed that it might be carrying hazardous goods. The onus to prove the fact that vehicle was carrying hazardous goods was either upon the respondent no.5 or upon the respondent no.6. Respondent no.5 has remained Ex.parte throughout and respondent no.6 although has tried to prove that there is violation of terms and conditions of the insurance policy or there is violation with respect to having effective D/L for carrying hazardous goods yet has failed to prove the fact as to what articles the offending vehicle no.2 was carrying at the time of accident. Therefore, the court is of the opinion that appropriate evidence has not come on record to establish that the tanker was carrying hazardous goods or the driver of the tanker, namely. Ram Murat was not having a licence to carry such articles. Further, the evidence which the respondent no.6 is filing is on the basis of the licence no.162 issued by the Murthal Authority, Sonepat. Who has procured the certificate & who has given the *same to police & where from the respondent no.6 might have received are the facts which have not been covered by respondent no.6. Admittedly, Ram Murat has died on the spot. Therefore, much relevance cannot be placed even on this certificate procured by the respondent no.6. The liability of the respondent no.6 otherwise has been established . In these circumstances, the court is of the opinion that the respondent no.6 is not entitled to have recovery rights from the respondent no.5*."

4. Clearly, the approach of the tribunal was wholly misdirected. It missed the nub of the argument.

5. Section 14(2) of the MV Act reads as under:-

"(2) *A driving licence issued or renewed under this Act shall—*

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus ; and]

(b) in the case of any other licence-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of [fifty years] on the date of issue or, as the case may be, renewal thereof –

(A) be effective for a period of twenty years from the date of such issue or renewal ; or

(B) until the date on which such person attains the age of [fifty years], whichever is earlier;

[(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or, as the case may be,

renewal thereof be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal;]

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

6. The rules 9 and 132 of Central Motor Vehicle Rules, 1989 to the extent relevant, read as under:-

"*9.* ***Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods****.—*

X X X

(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

X X X

132. ***Responsibility of the transporter or owner of goods carriage****.—*

X X X

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

X X X

7. The learned counsel for the tenth respondent tried to argue that there is no evidence showing that the tanker in question was carrying any hazardous goods at the time of accident. This is also the wrong impression on which the tribunal proceeded. It ignored the evidence led before it that

the tanker was carrying air-fuel at the time it met with accident. It was not correct to observe that the only material showed to the tribunal was some media coverage about the accident. The reference to the insurance cover note (R6W1/A) by the tribunal was correct but it failed to note that the insistence in the contract was on the driver holding an affective driving license. For purpose of oil tanker actually carrying air-fuel, the driving licence would not be what is the ordinarily issued but one with an endorsement in terms of Section 14 of the MV Act. The document purporting to be a certification of special training undergone by the driver for purpose of hazardous goods was found to be a forged one. In these circumstances, it was all the more necessary for the tribunal to examine the evidence more acutely. The observations of the tribunal that the onus to prove that the tanker was carrying hazardous goods was on the fifth respondent was incorrect. The fifth respondent rather owed an explanation to the evidence brought on record affirming that the vehicle was actually carrying hazardous goods at the time of the accident.

8. On being asked, the learned counsel for the eighth and tenth respondents fairly conceded that the driver of the tanker did not have any endorsement in the nature required under Section 14 of the MV Act on the driving licence he possessed.

9. In above facts and circumstances, the appeal must be allowed. There was a clear breach of terms and conditions of the insurance policy. The impugned judgment, to the extent it declined recovery rights against the tenth respondent, is set aside. The appellant is granted recovery rights against the party respondent (M/s Tayal Oil Solvent & Chemicals).

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

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 18, 2016
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