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

Date of Decision: 26.04.2016

\+ MAC.APP. 402/2013 and CM No.7192-7193/2013

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Amit Gaur and Mr. Pradeep Gaur, Advocates

versus

SH NARAIN SINGH RANA & ORS ..... Respondents

Through: Mr. Harish C. Pant, Advocate for R-4 & 5

Mr. Chandra Praksh, owner, in person

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In the proceedings arising out of accident claim petition (suit no.389/2011/2008), instituted on 06.12.2008 by the first to third respondents (claimants) seeking compensation under Section 163-A of the Motor Vehicles Act, 1988 (M.V. Act) on account of a death of Anandi Devi, in a motor vehicular accident that occurred on 03.05.2006 involving negligent

driving of a bus bearing registration No.UA-07K-3530 (offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question, issue was raised as to the breach of terms and conditions of the insurance policy on the ground that the driving license (Ex. R3W1/6) purportedly issued by the licensing authority at Meerut, U.P. upon verification, was certified to be a fake (Ex. R3W1/5).

2. The Tribunal rejected the plea of the insurer about breach of the terms and conditions of the insurance policy, referring to the evidence of witness, Avinash Kumar, Dy. Manager of the insurer (R3W1) and also to report showing that the driver (the fourth respondent) was holding a driving license (Ex. R3W1/8) issued by the licensing authority, Haldwani, initially for Light Motor Vehicle (LMV) with effect from 13.02.1997, which was endorsed *inter alia* for Heavy Transport Vehicle (HTV) on 13.07.1998 and further for HTV Hill on 08.07.2003, valid from 13.04.2006 to 12.04.2009. On the basis of this finding, the tribunal held that the driver of the offending vehicle was holding a valid and effective driving license and, thus, declined exoneration for the insurer.

3. By the appeal at hand, the insurance company questions the above noted finding and seeks exoneration or, in the alternative, recovery rights. It relies on *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, (2007) 3 SCC 700.*

3.1 Noticeably, the judgment in *Laxmi Narain Dhut (supra)* was rendered by a bench of two Hon'ble Judges, in a case where the claim was on account of own damage. It is in that context that the court held that the decision in

National Insurance Co. Ltd. Vs. Swaran Singh, 2004 (3) SCC 297 would have no application to cases involving third party risks.

3.2 The case at hand, in contrast, is a case of third party risk. As held in the case of *Swaran Singh (supra)* mere absence, fake or invalid driving license by itself cannot result in the insurance company being entitled to claim exoneration. To avoid its liability, the insurer must prove that the insured was guilty of negligence and had failed to exercise reasonable care or caution. In the absence of proof to above effect, the view taken by the tribunal cannot be faulted.

4. The appeal is thus unmerited and consequently dismissed. Resultantly, the pending applications also stand dismissed.

5. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

APRIL 26, 2016
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