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

Date of Decision: 17th March, 2016

\+ **MAC.APP. 720/2006 with CM Nos. 11685/2006 & 11683/2006**

KRISHAN PAL

..... Appellant

Through Mr. Vikas Mahajan and Mr. S S Rai, Advs.

versus

NATIONAL INSURANCE CO LTD

..... Respondent

Through Mr. Shoumik Mazumdar and Mr. Pankaj Seth, Advs. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 21.11.2003, the motor accident claims tribunal (tribunal) decided accident claim case registered as suit No.345/1997 respecting death of Joginder Singh in a motor vehicular accident that occurred on the night intervening 23rd and 24th December, 1996 involving tempo Tata 407 HR 47-3685 (the offending vehicle), admittedly insured against third party risk with the first respondent. The appellant admittedly is the registered owner of the said vehicle and the person insured in its respect, the second respondent being the driver on the relevant date at the time of the accident.

2. The tribunal held inquiry and, by judgment dated 21.11.2003, granted compensation in the sum of Rs.12,44,600/- with interest in favour of the claimants. During the inquiry, the first respondent (insurer) had taken the plea that the driving licence presented by the second respondent (driver) to the investigating officer of the corresponding police case, purportedly issued by the licencing authority at Meerut (UP) had been found, upon verification, to be a fake document. On this, the insurer took the plea that there had been breach of terms and conditions of the insurance policy. This position was contested by the appellant and the driver on the plea that the latter held a valid and effective driving licence (Ex.RW3/1) which had been issued by the licensing authority at Mathura (UP) on 04.02.1994 for the period 04.02.1994 to 08.02.1997.

3. During the inquiry, the insurer, the driver and the owner of the offending vehicle led evidence, the appellant (RW1) and the driver (RW3) appeared as their own respective witnesses. In addition, reliance was also placed on the evidence of Makhan Singh, Senior Clerk of office of ARTO, Mathura (RW4). The insurer on the other hand relied on the evidence of its official Om Prakash Sharma (RW2) and R A Tiwari, an official from RTO, Meerut (RW5).

4. It was found by the tribunal that the driving licence purportedly issued by the Meerut authority was fake. It was, however, also found that the driving licence (Ex.RW3/1) issued by Mathura Authority was valid and effective covering the period in question.

5. The tribunal concluded that there was breach of terms and conditions of the insurance policy observing thus :

"From the evidence particularly Ex.RW3/1, it is evident that the licence No. A-1343/MTR/94 dt.26.12.1990 was valid upto 3.2.1997 and was recovered by the police at the time of accident. RW.3 Ajit Singh has got exhibited the copy of D.L which shows that the said D.L. was issued by Licencing Authority Mathura. It means that D.L which was taken into possession by the police was issued by Mathura Licensing Authority. From the testimony of RW.4 Makhan Singh, Sr. Clerk it is noticed that this license was got renewed by Ajit Singh from their authority and from his testimony it is also evident that D.L no. 1170/Meerut/90 had been issued by RTO Meerut which was valid upto 25.12.1993. However, the testimony of RW5 shows that licence No. A-1170 was issued in the name of Amrish Pal which was to expire on 26.2.1995 which means that the original D.L. was issued in the name Amrish Pal by Meerut Licencing Authority and respondent no.1 got the D.L renewed in his name. Thus, the evidence of these witnesses shows that he was not holding a valid licence but a fake one.

Respondent no.2 who is the owner of the vehicle though has stated that respondent no.1 was holding a valid driving licence and he failed to prove that the driving license No. A-1343/MTR/94 was issued by Meerut Authority. It means he allowed respondent no1 to drive the vehicle on a false licence. Thus Respondent no.3 is at liberty to recover the amount of compensation from R. 1 and 2."

6. The owner has come in appeal challenging the view taken.

7. For the reasons set out in the application (CM No.11683/2006), the delay is condoned. The application is disposed of.

8. Once it had been established on record that the driver was holding a valid and effective driving licence issued by the licensing authority at

Mathura (UP), the plea of the insurer about breach of terms and conditions of the insurance policy could not have been accepted. It may be that the driver is guilty of procuring a fake and fabricated document showing he to have been granted a driving licence by the licensing authority at Meerut. That may entail consequences including those under the criminal law against him. By this fact alone, however, it cannot inferred that the owner of the offending vehicle was privy or party to the design of the driver in obtaining such a fake driving licence. For purposes of the owner, the fact that the driver actually held a valid and effective driving licence by Mathura authority should have been sufficient to reject the plea of the insurance policy. [*United India Insurance Company Ltd. V. Lehru & Ors.* (2003 3 SCC 338) and *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

9. The appeal is, therefore, allowed. The recovery right granted against the appellant are set aside.

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

R.K. GAUBA
(JUDGE)

MARCH 17, 2016
VLD