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

Date of Decision: 4th April, 2016

\+ **MAC.APP. 399/2013**

SH. MOHD.MUSTEKEEN & ORS. ..... Appellants
Through**:** Ms. Shantha Devi Raman, Adv.

versus

M/s BAJAJ ALLIANZ INS. CO. LTD. & ORS. ..... Respondents
Through**:** Mr. Rajat Brar, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The motor accident claims tribunal (tribunal) decided two claim petitions (MAC petition No. 970/2010 and 973/2010) which had been preferred on 16.09.2008, by common judgment dated 08.09.2011, awarding compensation in the sum of ₹ 3,68,200/- and ₹ 15,000, both with interest @ 7.5 % in favour of the respective claimants, fastening the liability to pay the said amounts on the first respondent (M/s Bajaj Allianz General Insurance Company Ltd.) which had issued a third party insurance in respect of the offending vehicle described as Rural Transport Vehicle bearing registration No. DL IV A 1238 (RJV) for the period covering 06.08.208 when the said offending vehicle had been involved in the accident giving rise to the cause of action for compensation to be claimed. The said offending vehicle (RTV)

admittedly is owned and registered in the name of the appellant herein, he along with the driver and owner having been impleaded as the party respondents in both the cases.

2. During the inquiry before the tribunal, the insurer (first respondent) had taken the plea that there had been breach of terms and conditions of the insurance policy as the driving licence (Ex.R3W1/2), shown by the driver, upon verification, was found to be a fake document. This contention was upheld. Noticeably, the appellant had only examined himself (as R2W1) to state that he had checked the driving licence but at the time of engaging the driver on the vehicle he had not retained a copy thereof. Thus, while the insurer was called upon to satisfy the awards, it was granted recovery rights against the appellant.

3. By the appeal at hand, the appellant has challenged the grant of recovery rights in MACT case No. 970/2010 on the claim petition brought by the third respondent and fourth respondents herein (claimants) on account of death of Manoj Sharma in the aforementioned accident. The contentions raised through the appeal include one to the effect that the later efforts of the appellant (the owner/insured) have brought to light that the driver (second respondent) was holding a valid and effective driving licence issued on 23.3.2000 by the licensing authority Fatehgarh, Farookabad, (UP) which had been subsequently renewed and was valid including for the date of accident, its copy having been submitted (at page 130 of the paper book) along with a verification report (page 132 of the paper book) obtained from the competent licensing authority at Fatehgarh, Farookabad (UP).

4. When the appeal was entertained by order dated 06.05.2013, the Court was informed that the appellant had deposited an amount of ₹ 1,37,

891/- with the tribunal in the execution proceedings taken by the tribunal to enforce the recovery rights. While the further proceedings on the execution application were stayed, the insurance company was directed to file a verification report regarding the said driving licence of the second respondent.

5. The appeal had been filed with a delay of 504 days and, thus, with an application for condonation (CM No. 7136/2013). Since the appellant now relies upon proof as to the another driving licence another application seeking liberty to rely on additional evidence (CM No. 7137/2013) was also submitted.

6. The counsel for the insurer at the hearing on the appeal, submitted that the appeal does not deserve to be entertained for two prime reasons; first, that it is inordinately delayed and, second, that the appellant had settled the dispute with the insurer before the executing forum. Reference in this regard was made by him to the proceedings recorded before the executing forum on 19.09.2012 (page 118-119 of the paper book).

7. Having heard counsel on both sides and having gone through the record, this Court finds the objections raised by the insurer to be not only unfair but wholly without merit. If the appellant had paid certain amount of money to the insurer at the time of proceedings for enforcement of the recovery rights, the same cannot mean that he has forfeited his right to pursue the remedies lawfully available to him under the normal process. The tribunal may have recorded the undertaking given by the appellant before it to pay the amount under the recovery rights as "settlement". But, the said settlement and undertaking would undoubtedly be subject to its

legitimate interest being pursued and prosecuted through the remedies available under the law.

8. It is noted that though the second driving licence was submitted in support of the contentions raised in the appeal filed in May, 2013 and due notice of the said document was given to the insurer by order dated 06.05.2013, the insurer took its own time in verifying the same. It has eventually submitted a verification report, this after it had to be reminded of the need for compliance, *inter alia,* by order dated 25.05.2015. Thus, it does not lie in the mouth of the insurer to raise the issue of delay.

9. The core question to be addressed in the appeal at hand is as to whether the driver was holding a valid and effective driving licence on the date of accident. The counsel for the insurer conceded at bar that the verification now made has confirmed that the driving licence shown by the owner of the offending vehicle (copy at page 130 of the paper book) is a genuine document. Since the document confirms that the driver was holding a valid and effective driving licence on the date in question, the appeal deserves to be allowed and the recovery rights granted against the appellant deserve to be set aside. Ordered accordingly.

10. The insurer has already recovered some amount (out of the amount paid to the claimants in this case as compensation) from the appellant in execution of the recovery rights. The said amount shall now be liable to be refunded. The insurer shall deposit the said amount with the tribunal within 30 days whereupon it shall be released to the appellant.

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

12. The appeal with applications stand disposed of.

R.K. GAUBA
(JUDGE)

APRIL 04, 2016
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