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

Date of Decision: 12th February, 2016

+ **MAC.APP. 568/2013**

ALLAUDDIN Appellant

Through: Mr. Siddhanth, Adv.

versus

THE ORIENTAL INSURANCE CO LTD & ORS

..... Respondents

Through: Mr. L. K. Tyagi, Adv. for R-1.
Mr. Navinder Singh Gussain,
Representative of DTC.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was impleaded as second party in the claim petition under Sections 166 and 140 of Motor Vehicles Act 1988 (the MV Act) by the third to sixth respondents on the allegations that he is the owner of the truck bearing registration no.DL-1G-6433 which was driven by the second respondent herein in a rash/negligent manner at 11:25 PM on 28.08.2005 for which reason there was a collision involving the said truck with three wheeler scooter no. DL-1RC-6301, consequent to which Surender Parshad Rai suffered injuries that caused his death. The claim petition registered as petition no.150/2006 was inquired into, after notices to the appellant, Ram Chander (the driver) and the first

respondent herein (insurer). The insurance company admitted the insurance policy having been issued in respect of the truck for the relevant period against third party risk though it took up the defences that the insured (appellant) inspite of notice under Order 12 Rule-8 of Code of Civil Procedure, 1908 (CPC) had failed to produce a valid driving license of the driver (second respondent) or permit of the truck for the relevant period. The appellant had joined the driver in the written statement denying the involvement of the truck in the accident. At the inquiry, however, he did not lead any evidence in defence.

2. The tribunal, by judgment dated 21.10.2008, awarded compensation in the sum of ₹8,06,954/- in favour of the claimants and upheld the contention of the insurance company about breach of the policy conditions on the grounds that the driving license of the driver was not valid for the National Capital Territory of Delhi and that the insured (appellant) had failed to produce the permit inspite of notice under Order 12 Rule-8 CPC. In this view, the insurance company, though directed to pay compensation awarded by the tribunal to the claimants, was granted liberty to recover it from the appellant.

3. The appeal was brought with delay of 1580 days, with application under Section 5 of Limitation Act. It is stated in the said application (CM No.9820/2013) that after passing of the impugned judgment, the appellant herein had moved an application under Order 9 Rule-13 CPC with another application under Order 21 Rule-26 CPC in the course of execution case no.68/09 but the appellant was constrained to withdraw the same on 02.05.2013 and, thereafter, the present appeal was filed. In

the given facts and circumstances, the delay is condoned and the appeal is entertained on merits.

4. The reason which impelled the tribunal to return the findings about breach of terms and conditions of the policy and so as to grant recovery rights to the insurance company are set out in (para 15 of) the impugned judgment thus:-

“Respondent No.3 had examined Mr. Rajesh Kumar its A.O. Mr. Kumar testified that they had issued notice U/o 12 rule-8 to the insured for producing the policy, permit and driving licence of the driver. The notice was served but the required documents were never produced. He further claimed that the driver did not possess valid driving licence. It had also examined Mr. R. K. Tiwari from Licensing Authority, Meerut. Mr. Tiwari testified that they had issued a licence in the name of Respondent No.1/driver. The same was not valid in Delhi. They issue driving licence valid in Delhi only when the licence holder produces a training certificate from a specified institute. Driver of the offending vehicle was not supposed to drive the vehicle in Delhi. I find on record certified copies of the criminal record. It contains driving licence for previous period i.e. 11.12.02 to 10.12.05. It clearly contains stamp to the effect “it was not valid in Delhi”. Additionally, we can draw presumption against Respondent No.2 because he did not comply with notice U/o 12 rule-8 that the vehicle was not carrying valid permit for Delhi on the date of accident.”

5. The copy of the license which was held by the driver (second respondent herein) was submitted on the record of the tribunal (at page 189) and clearly shows that it was issued on 11.12.2002 by the competent authority at Meerut, initially valid up-to 10.12.2005 and, thereafter, renewed periodically, its then validity being confirmed to be up-to 16.03.2012 as per certificate issued by the licensing authority, Meerut on 25.01.2010 (page 51 of the paper book).

6. Undoubtedly, the driving license bears an endorsement that it is not valid for purpose of National Capital Territory of Delhi. It is stated that this endorsement had to be made by the said authority in view of directions of this Court in orders dated 09.12.2002 & 14.11.2003 in Civil Writ petition no.3436/1998 (*Rajeev Awasthi Vs. UOI & Ors.*). The reasons why there was an inhibition against the driving license to be held good and valid for National Capital Territory of Delhi are because the licensing authorities were asked not to issue driving licenses, unless the license holder obtains a certificate of training from the specified institute. This, however, does not mean that the driving licenses issued by the competent authority of another State will not be a proof of confirmation as to the competence of the driver to drive, not the least lead to the assumption that the driver would not have had the requisite capacity to drive the motor vehicle on roads within National Capital Territory of Delhi to the effect that negligence on his part leading to the accident from which a claim for compensation arises is bound to be inferred.

7. The Supreme Court in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297, in para 110 (vi), ruled as under:-

“(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach”

to allow defences available to the insurer under Section 149(2) of the Act.”

8. In view of the above law laid down by the Supreme Court, the insurance company cannot be allowed to escape its liability, unless it shows the breach of the conditions of the driving license to be so fundamental as to have contributed to the cause of accident. Since that cannot be said to be the case at hand, the finding of the tribunal to this effect cannot be sustained.

9. As regards the other requirement, the appellant in (para 9 of) the memorandum of appeal submitted that there was a valid permit issued by the transport authority, Delhi in respect of the truck for the period in question. This is confirmed by copy of the said permit (page 57 of the paper book) valid for the period 31.10.2002 to 12.05.2006. In spite of opportunity, the insurance company did not file any reply to the memorandum of appeal nor raises any issue as to the genuineness of the document now shown. Thus, it must be deemed to have admitted the contention of the appellant with regard to the permit.

10. In the result, the appeal is allowed. The direction of the tribunal granting recovery rights to the insurance company is set aside.

11. The appeal is disposed of in above terms.

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

**R.K. GAUBA
(JUDGE)**

FEBRUARY 12, 2016/ssc