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

Date of Decision: 06.05.2016

\+ MAC.APP. 554/2007 and CM No.12212/2007 and 5645/2009

INDRAJ SINGH ..... Appellant

Through: None

versus

ORIENTAL INSURANCE COMPANY & ORS .... Respondents

Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By a common judgment passed on 11.05.2007, the Motor Accident Claims Tribunal (Tribunal) decided three connected accident claim petitions (suit No.270/2000, 261/2000 and 269/2000) on account of the death of Bano Begum, Master Zaved and Anjum Khan in a motor vehicular accident that occurred on 02.12.1999 involving negligent driving of a bus bearing registration no. DL-1P-2000 (offending vehicle) proved at the inquiry to have been driven in a negligent manner by the second respondent (driver). The bus concededly was owned by the appellant who had been impleaded as

a party (second respondent) before the Tribunal, in addition to the first respondent (insurer).

2. During the inquiry into the three claim petitions, the insurer had taken the plea that the driver was not holding a valid or effective driving license. This contention was resisted by the appellant on the plea that at the time of engaging the second respondent as a driver of the offending vehicle, his driving licence had been properly checked and his driving test was taken to ensure that he was capable and competent to drive.

3. The insurance company, by its evidence, sought to prove that in the corresponding criminal case registered, the second respondent had been prosecuted not only for the fatal accident but also for the offence of driving of a motor vehicle without a valid driving license punishable under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 (M.V. Act). The insurer's witness (R3W1) also proved on record that a notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) had been issued to the owner / insured but inspite of delivery, he had failed to produce the valid driving licence.

4. The tribunal while awarding compensation in favour of the claimants in the three cases (third to sixth respondents herein) directed the insurance company to pay under the insurance policy but granted it recovery rights against the appellant, holding that the breach of the terms and conditions of the policy had been brought home.

5. The appeal challenges the grant of recovery rights reiterating the defence taken before the tribunal that at the time of engagement of the

second respondent as the driver, his driving license had been checked and his capability to drive verified by appropriate test. In this context, the appeal refers to the testimony of the appellant, who had appeared at the inquiry (as RW1) and also a copy of the driving license (Mark A) which had been submitted on record.

6. At the hearing, neither side has appeared to assist. This was the state of affairs even on the earlier date of hearing. There is no good ground to defer the matter yet again.

7. On perusal of the record, it is found that the contention of the appellant must be accepted. He had placed on record a copy of the driving licence (Mark A) which undoubtedly shows that though it was issued on 21.01.2004, as noted by the tribunal in the impugned judgment, the licensee (second respondent) was in possession of a driving license since 24.04.1993 in respect of light motor vehicle (commercial) and from 27.10.1996 for heavy transport vehicle.

8. In these circumstances, the tribunal fell into error by concluding that the driving licence was issued in favour of the second respondent only in the year 2004. Since the driving licence (mark A) was apparently a renewed driving licence, further investigation was required with regard to the previous driving licences held by him. No such investigation has been carried out by the insurance company.

9. Be that as it may, following the view taken in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *United India Insurance Company Ltd. V. Lehru & Ors.* (2003) 3 SCC 338, the evidence of the

appellant as RW-1 is found to be the complete answer to the defence taken by the insurance company. The owner of the vehicle having exercised due diligence, there is no case made out for breach of terms and conditions of the policy.

10. Thus, the recovery rights granted against the appellant are set aside.

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

12. The appeal is disposed of in above terms. The pending applications also stand disposed of.

R.K. GAUBA
(JUDGE)

MAY 06, 2016
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