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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 1st April, 2016

+ **MAC.APP. 390/2010**

BABITA YADAV & ORS.

..... Appellants

Through: Mr. Peeyush Sharma, Adv.

versus

NARENDRA AGGARWAL & ORS

..... Respondents

Through: Ms. Vibha Mahajan Seth, Adv. for R-4.

Mr. P. Acharya, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The only issue raised by the appellants (claimants) by the appeal at hand is the total exoneration of the fifth respondent (insurer) by the tribunal by judgment 27.03.2010 in Suit No. 148/2004, fastening the liability on the fourth respondent (the registered owner of the offending vehicle) to pay the compensation awarded (₹ 16,61,248/-) on account of death of Netrapal Singh Yadav in a motor vehicular accident that had occurred on 10.04.2002 involving the three wheeler scooter bearing No. DL 1RG 2512 (TSR) statedly driven in a rash manner by its driver (first respondent namely).

2. While upholding the contentions of the claimants (appellants) on the basis of evidence during inquiry that the accident had occurred due to rash driving of the TSR by the first respondent and in its wake awarding

compensation, the tribunal noted that the TSR was registered in the name of the fourth respondent and though he had taken the plea having sold the same prior to the date of accident, no evidence having been led, he was found, and held, vicariously liable to pay the compensation. The tribunal also noted that the first respondent (the driver) had admitted that he was not having any valid driving license. For this reason, the tribunal observed that no liability could be fastened against the insurance company and, therefore, directed the fourth respondent (registered owner) to satisfy the award.

3. The grievance of the appellants is that the fourth respondents has failed to satisfy the award and that they have not been able to recover it from him, even though, the judgment was passed on six years ago (on 27.03.2010).

4. In *United India Insurance Company Ltd. V. Lehu & Ors.* (2003) 3 SCC 338, the Supreme Court observed as under:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly,

even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia[(1987) 2 SCC 654] , Sohan Lal Passi [(1996) 5 SCC 21 : 1996 SCC (Cri) 871] and Kamla [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] cases. We are in full agreement with the views expressed therein and see no reason to take a different view”.

(emphasis supplied)

5. In view of the above, the appeal is allowed. The directions in the impugned judgment are modified. The fifth respondent (insurer) is directed to satisfy the award by appropriate deposit of the compensation with upto date interest in favour of the claimants (appellants) with the tribunal within 30 days and, thereafter be at liberty to take out appropriate proceedings before the tribunal to recover the amount from fourth respondent (registered owner) in terms of the findings recorded by the tribunal.

6. The appeal is disposed of in above terms.

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

APRIL 01, 2016

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