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

Date of Decision: 17th March, 2016

\+ **MAC.APP. 513/2014 & CM No.14361/2015 (for restoration)**

FUTURE GENERALI INDIA INSURACE CO LTD..... Appellant
Through Mr. Abhishek Kumar Gola, Adv.

versus

BALA & ORS ..... Respondent
Through Mr. S K Vashistha, Adv. for R-4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 25.04.2014, the motor accident claims tribunal (tribunal) decided accident claim case registered as MACP No.874/2011 and granted compensation in favour of the first and second respondents (claimants) in the sum of ₹12,13,272/- with interest on account of death of Parvesh in a motor vehicular accident that occurred on 13.10.2011 involving truck bearing No.HR 55M 3618 (offending vehicle) admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. The tribunal held inquiry and on that basis concluded that the driver and owner of the offending vehicle (third and fourth respondents respectively) were jointly and severally liable. During the inquiry the insurance company had taken the plea that the driving licence held by the third respondent had been got issued on the basis of a fake

driving licence and thus pleaded that there was a breach of terms and conditions of insurance company and sought to be exonerated. This plea was rejected by the tribunal and thus the insurance company was directed to pay the compensation under the indemnity clause. By the appeal at hand the insurer seeks to challenge the aforementioned finding and conclusion and presses for recovery rights.

2. The tribunal considered the plea and the evidence by observing, thus, in the impugned judgment :

> *"28. In order to prove that insurance company is liable to recovery rights. They have come out with the defence that the driving licence possessed by the driver was renewed on the basis of fake driving licence.*
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> *29. R2W1 Ms. Prerna Jain has proved the notice under order 12 rule 8 CPC and u/s 134 M. V. Act issued to driver by their counsel Sh. M. P. Shahi. The witness has also proved the postal receipt and verification report Ex. R3W1/7.*
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> *30. The insurance company has also brought in the witness box R3W2 Sh. Ghanshyam Dass, Clerk, Office of Secretary RTA, Nuh, Haryana who has stated that as per record driving licence no.N-451/10 dated 11/4/2011 valid upto 10/4/2014 has been renewed from their office on the basis of driving licence bearing no.19642/AG/05 issued by RTA Agra.*
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> *31. The insurance company has also brought in the witness box. R3W2 Sh. Raj Kumar, Junior Assistant, Regional Transport Office, Agra, UP who had stated that DL bearing no. 19642/AG/05 dated 17/12/2005 which was valid upto 16/12/2025. The witness further stated as per their record the driving licence was issued in the name of Sh. Lokendra Singh Chahar S/o Sh. S. S. Chahar R/o H. NO.154, Balaji Puram, Shahganj, Agra. The witness has proved the relevant entry in the register which is Ex. R3W3/A. Therefore, as per insurance company the authorities at Nuh, Haryana had renewed the*

licence on the basis of fake licence of Agra. In this respect the Ld. Counsel for the insurance company has relied upon National Insurance company Vs. Santro Devi reported in 2001 (4) SSC 342. There is absolutely no diverse opinion as far as the proposition of law laid down by the Apex Court. However, the matter does not stop here and the insurance company still has to prove that the insured had committed willful, deliberate and conscious breach of the policy.

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33. In the present case on the date of accident the driver was having a valid licence and this driving licence may have been seen by the owner of the offending vehicle and finding it all right, he may have allowed the driver to drive the vehicle. As per law the owner was not supposed to verify or check the records of the licensing authority to satisfy himself that driving licence was obtained on the basis of fake driving licence, therefore by any stretch of imagination it cannot be said that there was any deliberate or conscious and willful breach on the part of the owner. He also have no notice if the new licence has been obtained on the basis of a fake licence.

34. The simple question arises whether the owner was aware or had noticed that the licence was obtained on the basis of fake licence and the owner had still permitted him to drive? The answer to this in all probability is in the negative because nothing on record has come if the owner had any such notice. As regards notice under order 12 rule 8 CPC the same has been issued by advocate and the best evidence to prove the notice was to examine the advocate. If the same is proved by simply the Senior Executive (legal) of insurance company. The same is not tenable in law as to the mode of proof. Therefore, no reliance can be placed on the notice under order 12 rule 8 CPC. The best evidence is of the subscriber of the notice."

3. The reasoning (in para 34) ignoring the notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) may be debatable. But the fact remains that the driver held a valid driving licence issued by the licensing

authority at Nuh (Haryana) on 11.04.2011 with validity up to 10.04.2014, thus, covering the date of accident. For purposes of the proceedings before the tribunal, it was of no consequence that the driving licence had been got issued on the basis of some fake document purporting to have been issued by the licensing authority at Agra (UP). Such facts may give rise to consequences, including under the criminal law, against the person having indulged in fabrication or use of forged documents. Without it being shown that the owner of the offending vehicle was privy or party to such design on the part of the driver to obtain a driving licence on the basis of fabricated document, the insurer cannot be allowed to plead breach of terms and conditions 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].

4. No other point was pressed.

5. For the foregoing reasons, the appeal is found unmerited and is accordingly dismissed.

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

R.K. GAUBA
(JUDGE)

MARCH 17, 2016/VLD