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

+ **MAC APPEAL No. 470/2007**

SHAKUNTLA DEVI

..... Appellant

Through: Mr. Ravinder S. Garia & Mr. D.S.
Chauhan, Advs.

versus

NANHE MIIYA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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12.08.2016

Review Petition No.351/2016 & CM Nos. 28648/2016 (condonation of delay), 28649/2016 (exemption)

1. The review petitioner had preferred MAC Appeal No. 470/2007 challenging the directions in the judgment of motor accident claims tribunal (tribunal) in claim case (Petition No. 473/2003) whereby while granting Rs. 3,67,400/- with interest as compensation in favour of the claimant (the first respondent in appeal), Oriental Insurance Company Ltd. (the third respondent in appeal) was granted recovery rights against her, *inter alia*, on the basis of finding that the motor vehicular accident which had given rise to the cause of action, had been caused on account of negligent driving of bus bearing No. DL 1PB 3426 (the offending vehicle) by Dinesh Kumar (impleaded as second respondent in the proceedings) who was not holding a valid or effective driving licence constituting breach of terms and conditions of the insurance policy. It may be added here that while putting in contest to the claim case before the tribunal, both Dinesh Kumar and the review

petitioner (concededly the registered owner of the offending vehicle) had taken a position that the said offending vehicle was driven at the relevant point of time not by Dinesh Kumar but by one Tilak Raj who was holding a valid and effective driving licence. The tribunal rejected this contention of the review petitioner thereby accepting the plea of the insurance company that there was breach of terms and conditions of the insurance policy returning a finding to this effect observing that no evidence had been adduced by either the said Dinesh Kumar or review petitioner to show that the vehicle was driven at the time of the accident not by Dinesh Kumar but by Tilak Raj. On the basis of evidence, *inter alia*, of R.K. Sharma (R3W1), the tribunal held that Dinesh Kumar was not holding a valid or effective driving licence since the document shown as a licence by the said person to the investigating police was a fabricated document. The tribunal also noted that though the insurance company had issued a notice under Order 12 Rule 8 CPC, the review petitioner had failed to respond to the same nor produced at any stage a valid driving licence of the driver of the offending vehicle.

2. The appeal of the review petitioner was entertained and admitted and directed to be shown in the regular list, to come up on its own turn, by order dated 16th January, 2009. It came up for hearing on 29th April, 2016, when none had appeared for the appellant. No adverse order was passed on the said date. The matter was again taken up on 2nd May, 2016 but the situation on the side of the appellant remained the same. No adverse order was passed even on that date, though caution was administered that the appeal would be considered on merits when it was taken up next. It may be added here that, under directions of this Court, a regular caution was being administered through the cause list duly notified requiring the presence of the parties and their counsel in the matters included in the regular category. When the

matter came up again on 3rd May, 2016, once again the appellant was truant. The appeal was considered with the assistance of third respondent who was present and dismissed it having to be found to be unmerited, by judgment passed on the same date.

3. Be that as it may, by the review application at hand, filed with two applications, one for condonation of delay (CM No. 28648/2016) and the other for exemption (CM No. 28649/2016), the petitioner reiterates the defence that the offending vehicle was driven not by Dinesh Kumar but by Tilak Raj. Reference is made to an application moved by the claimant at initial stage of the proceedings before the tribunal, under Order 1 Rule 10 CPC, seeking impleadment of the said Tilak Raj. The said application was rejected by the tribunal by order dated 30th January, 2004 holding that Tilak Raj was not a necessary or proper party. It is noted that the said application was moved by the claimant mainly because Dinesh Kumar (the first respondent before the tribunal) had taken the above-noted position vis-a-vis his role. The claimant otherwise had no reason to state that the vehicle was driven by Tilak Raj and not by Dinesh Kumar. Clearly, he had moved the application for impleadment of Tilak Raj by way of abundant caution, not abandoning his case against Dinesh Kumar and rather seeking joining of Tilak Raj as an additional party, apparently to take care of the situation if the respondents (driver and owner) were able to show that it was Tilak Raj and not Dinesh Kumar who was at the driving wheel.

4. Fact, however, remains that inspite of opportunity, neither Dinesh Kumar nor review petitioner herein, as respondents before the tribunal, offered any evidence during the inquiry to substantiate the above-mentioned plea. The tribunal noted that the insurance company had issued a notice under Order 12 Rule 8 CPC calling upon the registered owner (the review

petitioner) to produce a valid or effective driving licence of the driver. In spite of the said notice, no reply was given. In these circumstances, the tribunal held that there was no reason to disbelieve the claimant's case that the vehicle was driven at the relevant point of time by Dinesh Kumar. After all, he was the person who was prosecuted on the basis of available evidence by the police in the corresponding criminal case, the driving licence shown by him to the investigating police, upon verification, having been found to be fake document. This reasoning and conclusion was accepted by the Court in appeal by the judgment of which review is sought.

5. The prime grouse pressed by the counsel for the review petitioner is that an application under Order 41 Rule 27 CPC had been moved which also required consideration. In order to invoke the said provision of law, the appellant (review petitioner) have to show either that the evidence which is sought to be adduced at the stage of appeal was offered before the tribunal (trial court) which had refused to admit it or that notwithstanding the exercise of due diligence such evidence was not within her knowledge or could not be produced at the time of the inquiry before the tribunal. The application under Order 41 Rule 27 CPC does not pass the muster on any of these parameters. Merely stating that the petitioner was seeking permission "to examine the said Tilak Raj" at the stage of appeal is not sufficient. There is no explanation as to why Tilak Raj could not be examined earlier.

6. In the said application, the review petitioner has, *inter alia*, stated that she is an illiterate old lady and her husband had died in 2002, and that there was an assurance held out by the counsel that the insurance company would pay the compensation and that she should "forget about the matter". These submissions, to say the least, are no good ground to re-open the proceedings concluded after due process. It may be added that the motor vehicular

accident which is the subject matter of these proceedings had occurred on 13.08.2003, after the death of the husband, at a stage when the offending vehicle was being plied under the control of the review petitioner herself.

7. For the foregoing reasons, the review petition is found to be unmerited. The same, with accompanying applications, is dismissed.

R.K.GAUBA, J.

AUGUST 12, 2016

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