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

Date of Decision: 13.05.2016

\+ MAC.APP. 581/2014

NEW INDIA ASSURANCE COMPANY LTD ..... Appellant
Through: Mr. RAvinder Singh and Ms. Raveesha Gupta, Advocates

versus

SUBHASH CHANDER GUPTA & ORS ..... Respondents
Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) had instituted an accident claim case (case no.527/12) *inter alia* with reference to a detailed accident report (DAR) which had been submitted by the local police, seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) on the averments that, on 22.01.2012, while travelling on the pillion of the motor cycle, he had suffered injuries statedly on account of the motor vehicle bearing registration no.DL-10C-5024 driven in a negligent manner causing an accident. The claim petition showed the appellant insurance company (insurer) in the array of respondents, it having admittedly issued insurance policy against third party risk in respect of the offending vehicle in the name of the third respondent herein (Mohd. Mumtaj), the registered

owner of the offending vehicle (i.e. second respondent before the tribunal). Mosin (second respondent herein) was also shown in the array of parties before the tribunal (as first respondent) with the plea that he was the driver of the offending vehicle at the relevant point of time.

2. The tribunal issued notices to all the three parties impleaded as respondents but the driver and owner of the offending vehicle as aforementioned would not participate. No written statement was filed inspite of the opportunity given.

3. The insurance company admitted the insurance cover but contested the case, *inter alia,* on the ground that driver of the offending vehicle was not holding a valid or effective driving licence as none had been produced before the investigating police, for which reason he had also been prosecuted for the offence thereby committed and further for the reason that inspite of notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) issued and served on the owner and driver, no such license had been produced.

4. The tribunal, by judgment dated 16.05.2014, upheld the case of the claimant about he having suffered injuries due to the negligent driving of the offending vehicle, and awarded compensation in the sum of ₹1,30,405/- in his favour directing the insurer to pay with interest. At the same time, the tribunal considered the plea of the insurer for exoneration. It was, however, not satisfied with the evidence led in respect of the above submission through N.K. Saxena (R3W1) and concluded that it had not been proved that the driver was not holding a valid or effective driving licence.

5. By the appeal at hand, the insurer submits that in absence of any contest from the side of the driver and the owner, the insurer having done

what it could in the facts and circumstances by issuance of a notice under Order 12 Rule 8 of the CPC to which there was no response, its contention should have been accepted and finding about breach of terms and conditions of the insurance policy should have been returned resulting in grant of recovery rights.

6. It is noted that inspite of notice, the second and third respondents (driver and owner of the offending vehicle) have chosen not to participate even in the hearing on the appeal. The material on record clearly shows that no driving licence was produced before the police after the accident during the investigation of first information report (FIR) no.23/12 of PS Kirti Nagar. The insurance company had called upon the owner and driver of the offending vehicle to produce the driving license by issuing and serving notices under Order 12 Rule 8 CPC. Again, there was no response. Beyond this, the insurance company could not have been expected to take any further steps. Since it was the burden of the owner and driver to show by positive evidence that the driving licence was actually held by the driver, no such evidence having been brought out, the plea of the insurer must be accepted.

7. Thus, the appeal is allowed. The insurer is granted recovery rights.

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

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

May 13, 2016
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